

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,) 8:13CR105
)
vs.)
)
TIMOTHY DEFOGGI,) Omaha, Nebraska
) August 19, 2014
)
Defendant.)

VOLUME I
TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE LAURIE SMITH CAMP
CHIEF UNITED STATES DISTRICT JUDGE AND A JURY

A-P-P-E-A-R-A-N-C-E-S

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Proceedings recorded by mechanical stenography, transcript
produced with computer.

1 (At 8:45 a.m. on August 19, 2014, with counsel for the
2 parties present in chambers, the following proceedings were
3 had:)

4 (Off-the-record discussion had but no record made.)

5 (Concluded in chambers at 9:08 a.m.)

6 (At 9:57 a.m. on August 19, 2014, with counsel for the
7 parties and the defendant present, and the jury panel present,
8 the following proceedings were had:)

9 THE COURT: We are here in the matter of the United
10 States versus Timothy DeFoggi, Case Number 8:13CR105.

11 Will counsel please enter their appearances.

12 MR. BECKER: Good morning, your Honor; Keith Becker
13 for the United States; here with co-counsel Michael Norris and
14 Sarah Chang.

15 THE COURT: Very good. Good morning to you all.

16 MR. BERRY: Good morning, your Honor; John Berry for
17 Timothy DeFoggi, along with Justin Kalemkiarian.

18 THE COURT: And good morning to you as well.

19 At this stage, we are going to begin the voir dire
20 process. This is a process that is used to allow the lawyers
21 to reduce the number of jurors to the number that they
22 actually need for the trial.

23 And before we begin asking questions, we need to have all
24 of the members of the jury panel stand and raise their hands
25 and take another oath.

1 (Jury panel sworn.)

2 (Pursuant to Local Rule, Pages 4 through 53 are filed
3 separately under seal.)

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1 THE COURT: Please be seated.

2 Before we take our noon break, I'm going to read you some
3 preliminary instructions.

4 Ladies and gentlemen, I'll take a few moments now to give
5 you some initial instructions about this case and about your
6 duties as jurors. At the end of the trial, I'll give you
7 further instructions. I may also give you instructions during
8 the trial. Unless I specifically tell you otherwise, all such
9 instructions, both those I give you now and those I give you
10 later, are equally binding and must be followed.

11 This is a criminal case brought against the defendant by
12 the United States government. The defendant is charged with
13 engaging in a child exploitation enterprise, conspiracy to
14 advertise child pornography, conspiracy to distribute child
15 pornography, and access with intent to view child pornography.

16 These charges are set forth in what is called an
17 indictment which I will summarize as follows:

18 The indictment alleges an Internet website, designated
19 Website A for purposes of the indictment, was established for
20 the primary purpose of the advertisement and distribution of
21 child pornography and a bulletin board for the discussion of
22 matters related to the sexual abuse of children, including the
23 facilitation of anonymous communications and prevention of
24 detention by law enforcement. Website A is alleged to have
25 operated from March of 2012 until December of 2012.

1 On November 18, 2012, law enforcement seized the computer
2 server hosting Website A from a web hosting facility in
3 Bellevue, Nebraska. While Website A remained operational from
4 November 19, 2012, through December 9, 2012, law enforcement
5 officers, armed with court-authorized orders, monitored the
6 electronic communications from Website A resulting in the
7 charges set forth.

8 Timothy DeFoggi allegedly accessed Website A during the
9 monitoring period.

10 Count I of the indictment alleges that between on or
11 about March 2, 2012, and on or about December 8, 2012, in the
12 District of Nebraska and elsewhere, Timothy DeFoggi and others
13 knowingly engaged in a child exploitation enterprise.

14 Count II of the indictment alleges that on or about March
15 2, 2012, and on or about December 8, 2012, in the District of
16 Nebraska and elsewhere, Timothy DeFoggi knowingly conspired to
17 advertise child pornography.

18 Count III of the indictment alleges that between on or
19 about March 2, 2012, and on or about December 8, 2012, in the
20 District of Nebraska and elsewhere, Timothy DeFoggi and others
21 knowingly conspired to distribute child pornography.

22 Counts IV through VII of the indictment allege that on or
23 about November 21, 2012; November 26, 2012; December 4, 2012;
24 and December 8, 2012; in the District of Nebraska and
25 elsewhere, Timothy DeFoggi knowingly accessed a means or

1 facility of interstate commerce to view child pornography.

2 You should understand that an indictment is simply an
3 accusation. It is not evidence of anything.

4 The defendant has pleaded not guilty and is presumed to
5 be innocent unless and until proved guilty beyond a reasonable
6 doubt.

7 It will be your duty to decide from the evidence whether
8 the defendant is guilty or not guilty of the crimes charged.
9 From the evidence, you will decide what the facts are. You
10 are entitled to consider that evidence in the light of your
11 own observations and experiences in life.

12 You may use reason and common sense to draw deductions or
13 conclusions from facts established by the evidence. You will
14 then apply those facts to the law which I give you in these
15 and in my other instructions and in that way reach your
16 verdict.

17 You are the sole judges of the facts, but you must follow
18 my instructions on the law, whether you agree with them or
19 not.

20 Do not allow sympathy or prejudice to influence you. The
21 law demands of you a just verdict, unaffected by anything
22 except the evidence, your common sense, and the law as I give
23 it to you.

24 You should not take anything I may say or do during the
25 trial as indicating what I think of the evidence or what I

1 think your verdict should be.

2 Finally, please remember that only this defendant, not
3 anyone else, is on trial here, and this defendant is on trial
4 only for the crimes charged, not for anything else.

5 To help you follow the evidence, I'll now give you a
6 brief summary of the elements of the crimes charged which the
7 government must prove beyond a reasonable doubt to make its
8 case.

9 With respect to Count I, the crime of knowingly engaging
10 in a child exploitation enterprise, as charged in Count I, has
11 three elements which are: One, that between on or about March
12 2, 2012, and on or about December 8, 2012, in the District of
13 Nebraska and elsewhere, the defendant knowingly engaged in a
14 series of three or more separate felony violations of the law
15 regarding sexual exploitation or other abuse of children; two,
16 the series of violations involved more than one minor victim;
17 and three, the defendant committed those offenses in concert
18 with three or more other persons.

19 Count II: The crime of conspiracy to advertise child
20 pornography as charged in Count II of the indictment has four
21 elements which are -- excuse me, three elements which are:
22 One, between on or about March 2, 2012, and on or about
23 December 8, 2012, in the District of Nebraska and elsewhere,
24 two or more people reached an agreement to commit the crime of
25 advertising child pornography; two, the defendant voluntarily

1 and intentionally joined in the agreement either at the time
2 it was first reached or at some later time while it was still
3 in effect; and three, at the time the defendant joined in the
4 agreement, the defendant knew the purpose of the agreement.

5 Count III: The crime of conspiracy to distribute child
6 pornography as charged in Count III of the indictment has
7 three elements which are: One, between on or about March 2,
8 2012, and on or about December 8, 2012, in the District of
9 Nebraska and elsewhere, two or more people reached an
10 agreement to commit the crime of distributing child
11 pornography; two, the defendant voluntarily and intentionally
12 joined in the agreement either at the time it was first
13 reached or at some later time while it was still in effect;
14 and three, at the time the defendant joined in the agreement,
15 the defendant knew the purpose of the agreement.

16 With respect to Counts IV through VII, the crime of
17 accessing child pornography with intent to view child
18 pornography as charged in these counts has three elements
19 which are: One, in the District of Nebraska and elsewhere,
20 the defendant knowingly accessed with intent to view one or
21 more visual depictions of child pornography; two, the
22 defendant knew that the visual depiction or depictions were of
23 a minor engaging in sexually explicit conduct; and three, the
24 visual depiction or depictions were produced using materials
25 that had been mailed, shipped or transported in interstate or

1 foreign commerce, including by computer.

2 You should understand what I've given you is only a
3 preliminary outline.

4 At the end of the trial, I will give you final
5 instructions on these matters. And those instructions will be
6 in writing, and they will be available to you in the jury
7 room. If there is any difference between what I just told you
8 and what I tell you later at the end of the trial, what I tell
9 you at the end of the trial will govern.

10 I've mentioned the word "evidence". Evidence includes
11 the testimony of witnesses; documents and other things
12 received as exhibits; any facts that have been stipulated,
13 that is, formally agreed to by the parties; and any facts that
14 have been judicially noticed, that is, facts which I say you
15 may but are not required to accept as true even without
16 evidence.

17 Certain things are not evidence. I will list those
18 things for you now. Statements, arguments, questions and
19 comments by lawyers representing the parties in the case are
20 not evidence.

21 Objections are not evidence. Lawyers have a right to
22 object when they believe something is improper. You should
23 not be influenced by the objection. If I sustain an objection
24 to a question, you must ignore the question and must not try
25 to guess what the answer might have been.

1 Testimony that I strike from the record or tell you to
2 disregard is not evidence and must not be considered.

3 Anything you see or hear about this case outside the
4 courtroom is not evidence unless I specifically tell you
5 otherwise during trial.

6 Sometimes a particular item of evidence is received for a
7 limited purpose only, that is, it can be used by you for one
8 particular purpose and not for any other purpose. I will tell
9 you when that occurs and instruct you on the purposes for
10 which the particular item can and cannot be used.

11 Finally, some of you may have heard the terms direct
12 evidence and circumstantial evidence. You are instructed that
13 you should not be concerned with those terms. The law makes
14 no distinction between direct and circumstantial evidence.
15 You should give all the evidence the weight and value you
16 believe it is entitled to receive.

17 In deciding what the facts are, you may have to decide
18 what testimony you believe and what testimony you do not
19 believe. You may believe all of what a witness said, or only
20 part of it, or none of it.

21 In deciding what testimony of any witness to believe,
22 consider the witness's intelligence, the opportunity the
23 witness had to have seen or heard the things testified about,
24 the witness's memory, any motives that witness may have for
25 testifying a certain way, the manner of the witness while

1 testifying, whether that witness said something different at
2 an earlier time, the general reasonableness of the testimony,
3 and the extent to which the testimony is consistent with other
4 evidence that you believe.

5 At the end of the trial, you must make your decision
6 based on what you recall of the evidence. You will not have a
7 written transcript to consult, and it is not practical for the
8 court reporter to read back lengthy testimony. You must pay
9 close attention to the testimony as it is given. If you wish,
10 you may take notes to help you remember what witnesses said.
11 If you do take notes, please keep them to yourself until you
12 and your fellow jurors go to the jury room to decide the case.
13 When you leave at night, your notes will be secured and not
14 read by anyone.

15 During the trial, it may be necessary for me to talk with
16 the lawyers out of the hearing of the jury, either by having a
17 bench conference here while the jury is present in the
18 courtroom or by calling a recess. Please understand that
19 while you're waiting, we're working. The purpose of these
20 conferences is to decide how certain evidence is to be treated
21 under the rules of evidence and to avoid confusion and error.
22 We will, of course, do what we can to keep the number and
23 length of these conferences to a minimum.

24 To ensure fairness, you, as jurors, must obey the
25 following rules:

1 Do not talk among yourselves about the case or about
2 anyone involved with it until the end of the case when you go
3 to the jury room to decide on your verdict.

4 Do not talk with anyone else about the case or about
5 anyone involved with it until the trial has ended and you have
6 been discharged as jurors.

7 When you are outside the courtroom, do not let anyone
8 tell you anything about the case or about anyone involved with
9 it until the trial has ended and your verdict has been
10 accepted by me. If someone should try to talk to you about
11 the case during the trial, please report it to the courtroom
12 deputy.

13 During the trial, you should not talk with any of the
14 parties, lawyers, or witnesses involved in the case. You
15 should not even pass the time of day with any of them.

16 If a person from one side of the lawsuit sees you talking
17 to a person from the other side, even if it is simply to pass
18 the time of day, an unwarranted and unnecessary suspicion
19 about your fairness may arise. If any lawyer, party or
20 witness does not speak to you when you pass in the hall, ride
21 in the elevator, or the like, it is because they are not
22 supposed to talk to you.

23 It may be necessary for you to tell your family, close
24 friends, teachers, coworkers, or employer about your
25 participation in this trial. You can explain when you are

1 required to be in court and can warn them not to ask you about
2 the case, tell you anything they know or think they know about
3 the case, or discuss the case in your presence.

4 But you must not tell anyone anything about the
5 proceedings, the evidence, or the jury's deliberations until
6 after I accept your verdict.

7 During the trial, while you are in the courthouse and
8 after you leave for the day, do not provide any information
9 about this case to anyone by any means, including electronic
10 devices.

11 Do not do any research on the Internet, in libraries, in
12 newspapers, or in any other way or make any investigation
13 about this case on your own. Do not visit or view any place
14 discussed in this case. And do not use Internet programs or
15 any other device to search for or to view any place discussed
16 in the testimony.

17 Also do not research any information about this case, the
18 law, the people involved, including the parties, the
19 witnesses, the lawyers or the judge.

20 Do not read any news stories or articles in print or on
21 the Internet, or in any blog about the case or about anyone
22 involved with it or listen to any radio or television reports
23 about the case or anyone involved with it.

24 Do not make up your mind during the trial about what the
25 verdict should be. Keep an open mind until after you've gone

1 to the jury room to decide the case and you and your fellow
2 jurors have discussed the evidence.

3 The trial will proceed in the following manner: First,
4 the government's lawyer will make an opening statement. Next,
5 the defendant's lawyer may but does not have to make an
6 opening statement. An opening statement is not evidence but
7 is simply a summary of what the lawyer expects the evidence to
8 be.

9 The government will then present its evidence, and
10 counsel for the defendant may cross-examine. Following the
11 government's case, the defendant may but does not have to
12 present evidence, testify, or call other witnesses. If the
13 defendant calls witnesses, the government's counsel may
14 cross-examine them.

15 After presentation of evidence is completed, the parties
16 will make their closing arguments to summarize and interpret
17 the evidence for you. As with opening statements, closing
18 arguments are not evidence.

19 The Court will instruct you further on the law. After
20 that, you will retire to deliberate on your verdict.

21 Okay. That's a lot of information to digest. And as I
22 mentioned, you will get instructions at the end of the trial,
23 and they will be available to you in writing in the jury room
24 for you to follow.

25 You've worked very hard this morning. Thank you all for

1 your patience and your attention.

2 Let's take a noon break and come back at 1:15.

3 Please reconvene in the jury room at 1:15. At that
4 juncture, we will hear opening statements from counsel.

5 Thank you. We're in recess.

6 (Recess taken at 11:56 a.m.)

7 (At 1:23 p.m. on August 19, 2014, with counsel for the
8 parties and the defendant present, and the jury NOT present,
9 the following proceedings were had:)

10 THE COURT: Do we need to discuss anything before the
11 jury comes out to hear the opening statements?

12 MR. NORRIS: I don't think so, your Honor.

13 MR. BERRY: No, your Honor.

14 THE COURT: All right. Please bring in the jury.

15 MR. NORRIS: Your Honor, may I check to see if this
16 is on or whether we need to move my mic for opening.

17 THE COURT: You may.

18 (Off-the-record discussion had.)

19 (Jury in at 1:26 p.m.)

20 THE COURT: Please be seated.

21 We are now ready for the opening statements. And we will
22 hear first from the government.

23 Mr. Norris, will you be presenting the opening statement?

24 MR. NORRIS: Yes, your Honor.

25 THE COURT: You may proceed.

1 MR. NORRIS: Thank you.

2 May it please the Court, counsel, ladies and gentlemen of
3 the jury.

4 Let me reintroduce myself. It hasn't been that long, but
5 still, I'm an Assistant U.S. Attorney here in the District of
6 Nebraska. Seated at counsel table are Sarah Chang, Keith
7 Becker with the Department of Justice. In the back row who
8 wasn't introduced this morning through my neglect is Jeffrey
9 Tarpinian. He's an FBI agent and he's the case agent in this
10 particular matter.

11 Together we have the privilege of representing the United
12 States in the criminal prosecution of the defendant,
13 Mr. DeFoggi.

14 The Court has gone over the charges with you. But in a
15 nutshell, a grand jury sitting here in the District of
16 Nebraska has returned a seven-count indictment against the
17 defendant.

18 They charged various child pornography and child
19 exploitation crimes. You heard that the first one, Count I,
20 is engaging in a child exploitation enterprise. The statute
21 simply criminalizes offenders who work in concert with others
22 in order to exploit children. That's what a child
23 exploitation enterprise is.

24 The Court went over the elements with you this morning,
25 so I'll just briefly touch on them. An individual is guilty

1 if he engages in a child exploitation enterprise by engaging
2 in a series of three or more felony offenses, predicate
3 offenses, and those predicate offenses include the crime of
4 accessing with intent to view child pornography.

5 That there is more than one minor involved. You will see
6 multiple victims in this case. You will learn of multiple
7 victims in this case. Those victims will range from babies to
8 prepubescents which is generally what you're going to hear
9 about. Almost predominantly, if not all that you're going to
10 hear about, is baby to prepubescent children. And there's
11 going to be no question when we're done here that we're
12 dealing with very, very young children.

13 Now, these series of violations involve three or more
14 people acting in concert in order to effectuate this
15 enterprise.

16 Now, Count II charges conspiracy to advertise child
17 pornography. Conspiracy sometimes is a fancy word, a word
18 that maybe people think entails more than it is. I anticipate
19 that you will be instructed what a conspiracy is because the
20 judge will instruct you as to the law.

21 Now, a conspiracy is really nothing more than an
22 agreement between two or more people to do a criminal act;
23 just two or more people, an agreement to do a criminal act, or
24 attempt a criminal act. The other persons don't need to be
25 named; they don't even have to be indicted. They don't

1 necessarily have to know each other. As a matter of fact, on
2 a lot of Internet conspiracies or Internet-based conspiracies,
3 they know that they're dealing with somebody, they know that
4 they're acting in concert, they know that they are
5 effectuating something that's in common for them, but they
6 might not know exactly who that other person is that they're
7 working with to violate the law.

8 The agreements are seldom, if ever, in writing, which
9 makes sense, if you step back and think about that. A drug
10 dealer, a drug conspiracy, why would we want to say that I
11 agree with you to import seven kilos of cocaine into Nebraska
12 at any given time; sign here, just to make sure you don't go
13 off and do this criminal act with somebody else. So again, it
14 doesn't have to be in writing. It doesn't have been formal.

15 So he's charged with conspiracy to advertise child
16 pornography. And for advertising child pornography, that
17 means that one conspirator, some conspirator, has to publish
18 or print or post a notice and that notice either seeks to
19 offer or to receive child pornography. Pretty simple.

20 He's charged in Count III with conspiracy to distribute
21 child pornography. We've talked about conspiracy. The same
22 holds for conspiracy wherever you see it in this particular
23 indictment.

24 And for distributing child pornography, that means a
25 conspiracy -- or a conspirator knowingly distributed child

1 pornography; that he knew that the visual depictions that were
2 being distributed to other co-conspirators or to other
3 individuals involved a minor engaging in sexually explicit
4 conduct; and finally, that that material was shipped or
5 affected interstate commerce by any means including by
6 computer. Everything you see is going to be computer-based.

7 There are four counts, accessing with intent to view
8 child pornography; Counts IV, V, VI and VII. They deal with
9 four specific dates. And they're going to be dates that
10 occurred between November 21st and December 8th of 2012;
11 specifically November 21st and November 26th, December 4th and
12 December 8th of 2012.

13 We have to show that the defendant knowingly accessed
14 child pornography, that he knew what he was accessing was
15 child pornography, and in other words what we're going to show
16 you is that he went to a board knowing that the board had
17 child pornography on it, a board that he was a frequent
18 visitor of, and he clicked on some images. And those images
19 would enlarge and he would be able to see the child
20 pornography.

21 And you'll see and you'll learn of the type of child
22 pornography not only available on the board, but that the
23 defendant accessed on November 21st, November 26th, December
24 4th, and December 8th. That's the background. That's the
25 indictment.

1 Let's talk about the evidence that you're going to hear.
2 We touched on some of it during voir dire this morning. But
3 each of these seven charges relate to the defendant's
4 involvement in an online networking -- social networking site
5 that was found here in Nebraska.

6 The site was hosted and administered right here in the
7 Omaha and Bellevue area. It was aptly named PedoBook, p-e-d-o
8 as in pedophilia, and book; one all word, P-e-d-o-B-o-o-k.

9 It was set up and operated very similar to Facebook, if
10 you're familiar with Facebook. You can do various things on
11 PedoBook. You could take polls, you could private message
12 with other individuals that shared your similar interests, you
13 could post items. Again it was very, very similar to
14 Facebook.

15 Now, PedoBook existed and it had two primary purposes.
16 The first purpose was to advertise and distribute child
17 pornography. It did this very effectively; very effectively.
18 You're going to hear testimony that there were more than
19 27,000 images available of child pornography and child
20 exploitation material on PedoBook. Over 27,000 images.

21 In addition to these 27,000 images, there were over 200
22 videos that were available to members or visitors to this
23 PedoBook site. These images involved children, prepubescent
24 minor children, engaged in sexually explicit conduct with
25 either other children or adults.

1 The second purpose with regard to PedoBook is simply to
2 promote discussions amongst individuals with like interests,
3 to foster a sense of community.

4 You're going to see the rules of PedoBook that will help
5 you see that fostering of a sense of community. You're going
6 to see the private messages that are exchanged on PedoBook
7 that relate to what the mutual interests were.

8 But again, what you're going to learn and what you're
9 going to see are messages that foster the desire for the
10 sexual abuse of children and a sense of community that goes
11 therewith.

12 You're going to learn that PedoBook had more than 300
13 groups. So if you had a fetish, if you had a desire, if you
14 had an interest, you probably had somewhere that you could go
15 as a member on PedoBook in order to facilitate and foster that
16 community.

17 Members could send private messages and post comments and
18 content to each of these groups. And you'll learn that the
19 defendant was an active member of PedoBook. You're going to
20 hear of an offensive display name and you're going to hear of
21 an offensive user name. Know these: These are names -- and
22 you'll have evidence that these are names that he selected
23 himself. These are names that he typed in when he joined the
24 group. These are names that he typed in when he joined
25 PedoBook. His user name was fuckchrist, f-u-c-k-c-h-r-i-s-t.

1 You'll see this name over and over and over again. You'll see
2 it is associated with a myriad of images that involve the
3 sexual exploitation of children.

4 You'll see that with this membership in this group comes
5 a display name. His display name was PTasseater. You'll
6 learn that PT is a common phrase for "preteen". So that was a
7 display name that he typed in when he signed on to register
8 for the board and that was used when he communicated with
9 other individuals or when he left messages or his footprint on
10 the board. You will grow weary of hearing these names.

11 You'll see the groups that he joined. You'll see those
12 groups and there were roughly 30, 31, 32 groups that he joined
13 on PedoBook. Not all of them are necessary. We don't need to
14 go into each and every one of them.

15 But some of those groups, just to get a nature and a
16 taste of some of the interests that are involved on that
17 board, some of the groups that the defendant joined included
18 Anything Goes - Hardcore Child Fucking, Babies and Toddlers,
19 Just Baby Girls, Just Baby Boys, Hard to the Core, and 0-2
20 Year Old Girls Private Sharing Group 2012.

21 You will see the private messages that were sent by the
22 defendant to other individuals. As you may suspect, those
23 images are going to be disturbing. Those messages will be
24 disturbing. In messages he sent to another PedoBook member
25 who also he was able to determine lived in that Washington,

1 D.C. area, he discusses about wanting to behead a child, cut
2 off -- in other words, cut off the child's head, masturbate as
3 a result of that, and then share that with somebody else.

4 The individual he was communicating with went by the
5 display name and user name of Toddler Lover and No One Will
6 Know. You will hear from Toddler Lover and No One Will Know.
7 You will learn that he, too, was prosecuted for his
8 involvement on this board. And he will tell you how he
9 communicated on the board, where he communicated on the board,
10 and the repeated attempts that were made in order for him to
11 meet up with PTasseater who was trying to get him to meet in
12 the Washington, D.C. area. It never happened. He didn't do
13 it, and he'll tell you why.

14 You'll see private messages that were posted on the
15 board, private messages from NE14PTCH; in other words, Anyone
16 For PTCH. PTCH, you'll learn, means preteen hard core.

17 Unknown to the defendant, this individual was an
18 undercover FBI agent who was administering to the board after
19 another individual had been arrested and while the FBI was
20 trying to determine who was trading on this board, who was
21 advertising child pornography on this particular board.

22 You'll hear from that individual. His name is Michael
23 Gordon. In his messages with Agent Gordon, the defendant
24 disclosed his interest in watching a young girl get beaten,
25 raped and killed. He disclosed that he was on Pedo board

1 between the hours of 4 a.m. and 6 a.m. in the morning,
2 something that will become important later and something that
3 FBI agents were able to use to their advantage when they
4 identified and later were able to arrest the defendant.

5 You're going to learn that PedoBook operated on what is
6 known as the Tor network. Tor is a subpart of the Internet.
7 It's designed to foster anonymity. Users can pinpoint the
8 location of PedoBook -- I'm sorry. Users cannot pinpoint the
9 location of PedoBook, and PedoBook cannot pinpoint the
10 location of users.

11 This is usually done through the use of IP addresses.
12 But here, through the use of the Tor network, the IP address
13 gets obfuscated. You'll learn that on the Tor network, your
14 communication bounces around to a bunch of other relay
15 computers. And in the process, the true identity of both the
16 website and the true identity of the user are obfuscated and
17 are not traceable by law enforcement, by the user, or by the
18 website.

19 A playground for illegal conduct. It can be a playground
20 for illegal conduct, such as posting child pornography or
21 doing other nefarious actions.

22 How did we find PedoBook? How did we get involved?

23 You're going to hear from Agent Tarpinian. He's going to
24 tell you that the FBI learned of the existence of servers, a
25 website, here in the Omaha area from Dutch law enforcement.

1 The authorities determined the existence of a site hosting
2 child pornography was right here in the United States. And
3 they also told him it's in the state of Nebraska.

4 They provided the IP address because they were able to
5 determine what the IP address was. And that led the FBI to
6 Aaron McGrath in West Omaha, as well as his place of business
7 where he was hosting PedoBook.

8 On November 15th of 2012, agents searched Mr. McGrath's
9 West Omaha home. It was important to catch him on his
10 computer. It was important to catch him as he was operating
11 on the Tor network. And it was important for them to catch
12 him as he was administering to this server, to PedoBook --
13 or -- well, to PedoBook. You're going to learn the reason why
14 it was important to them. And the reason why it was important
15 to them was they had a plan, not a plan just to catch one guy,
16 but a plan to catch multiple users and multiple members of
17 this group.

18 So they designed a plan in which it was planned that on
19 the 15th of November, they would execute a search warrant at
20 Mr. McGrath's residence. You'll hear about the execution of
21 that warrant.

22 They also, not quite simultaneously but shortly
23 thereafter wanted to go into his place of business and grab
24 the board, a board that hosted PedoBook. The intent was to
25 run the board and to identify those individuals who were both

1 members and users of that board and to attempt to locate where
2 they may be, and then ultimately to prosecute those
3 individuals.

4 They had to get authority to do this. It's not something
5 they just decided on their own to do. And they'll tell you
6 that they went up and got various levels of approval at high
7 management level at FBI headquarters, high management level at
8 the Department of Justice.

9 They were told: You can do this, but you've got to
10 monitor. And you've got to monitor closely. You're not going
11 to put any content, you're not going to put child pornography
12 on the board. And you're going to monitor that board 24/7; 24
13 hours a day, 7 days a week. And you're going to look if
14 there's a child in danger, if there's anybody in peril. And
15 if there is, you're going to do everything you can in order to
16 find local law enforcement, if it can be done, and to attempt
17 to rescue that child.

18 So this was done. So you're going to learn about the
19 entry into Mr. McGrath's home, a no-knock warrant; a no-knock
20 warrant in which the officers entered the residence very
21 quietly and very surreptitiously. Agent Tarpinian will tell
22 you that they were able to open the back door without knocking
23 because that's what the order -- the search warrant authorized
24 them to do; that they quietly walked into the first level
25 after they knew that Mr. McGrath was home; after they had been

1 notified through other law enforcement means that he was up on
2 his laptop, that he was communicating with a server, and that
3 he was on the Tor network.

4 Nobody's on the first floor. They head up the steps.
5 There's a locked bedroom. They gain access to that locked
6 bedroom and they find Mr. McGrath in his bed, covers pulled up
7 to his waist or so, laptop open. They tell him, "Do not --
8 drop the laptop; leave the laptop open." They give him
9 certain commands; he doesn't comply. He goes to shut the
10 laptop, which would thus create many, many issues and problems
11 for the FBI and their plan.

12 They were able to grab the laptop from him before it went
13 completely closed, so he was not completely able to shut that
14 laptop.

15 From there, they were able to pull the laptop open and
16 you'll see what the screen -- what programs were running at
17 that particular time. And you'll see screenshots of some of
18 those programs.

19 They then execute the warrant to grab the server at the
20 business in Bellevue, Nebraska.

21 From there, they can use that laptop, they can then take
22 command or control of PedoBook and run PedoBook for a period
23 of 19 days. They, in fact, do so. And in doing so, they are
24 able to identify a series and number of members who were on
25 that board that led to further prosecutions.

1 You're going to hear from Agent Gordon. I told you a
2 little bit about Agent Gordon. Agent Gordon is going to come
3 in and tell you that he was the individual, the FBI agent, who
4 took over for the administrator, the administrator being Aaron
5 McGrath.

6 He's going to tell you a couple of things -- he's going
7 to tell you a lot of things. You're going to see him on the
8 stand for a while.

9 But he's basically going to be able to do a couple of
10 things for you. He's going to be able to tell you that during
11 the 19 days that they were running that board, that the
12 defendant was very active. He's going to tell you that they
13 were able to find PTasseater, fuckchrist, the defendant,
14 whatever name you're going to hear, that he was on that board.

15 You're going to learn that the FBI, through the course of
16 this investigation, were able to conduct open source or
17 Google-type searches, looking for anyone using the name of
18 PTasseater or fuckchrist on any other sources; not just on the
19 Tor network, but other areas.

20 These searches identified the defendant, Mr. DeFoggi, as
21 having used those terms and residing at a residence in
22 Germantown, Maryland, which is just outside of D.C.

23 It was determined that Mr. DeFoggi worked in the cyber
24 realm, that he was an acting director at one time for cyber
25 for the Department of Health & Human Services. Hence, that's

1 why he was living in the Washington, D.C. area.

2 You're going to learn -- or they learned -- as they
3 learned, that he was dealing as an advanced computer user;
4 that he was familiar with Tor. And so similar plans were made
5 to do an execution once he was identified at this Germantown
6 residence.

7 You're going to learn about the execution of that
8 warrant. That warrant occurred on April 9th of 2013. You're
9 going to learn that a number of agents from Maryland -- you're
10 going to see many of them -- assembled at his residence, at
11 the defendant's residence, on April 9th of 2013 at 5:30 in the
12 morning -- prior to 5:30 in the morning.

13 Again, remember I told you earlier that Agent Gordon is
14 going to tell you when he was communicating in private
15 messages and otherwise with the defendant, that he -- the
16 defendant shared with him that he was on the board between 4
17 and 6 in the morning.

18 So again, these officers also feared destruction of
19 evidence. So their warrant, the warrant that authorized the
20 search in Germantown, Maryland, of the defendant's residence,
21 authorized a no-knock search warrant.

22 You're going to learn that they had a pen trap. And a
23 pen trap basically tells you what numbers are being posted to
24 and from the residence. Through that information, they were
25 able to determine that somebody was online in the house, and

1 somebody was on the Tor network. So this is all prior to
2 their entry on April 9th of 2013.

3 You're going to hear from the agents who made entry into
4 the house. It was a double entry. There were agents at the
5 bottom, in the back of the house, and agents in the main
6 floor; so the front of the house, the back of the house. A
7 battering ram was used. They were able to enter the house at
8 5:25 in the morning upon being notified that somebody was
9 online and that they were connected to the Tor network.

10 You'll hear from the agents who entered from the bottom.
11 They were able to get through the sliding glass door. There
12 were -- there was an individual who was playing video games;
13 not the defendant, but somebody else was up playing video
14 games at that time.

15 One agent will tell you, "I saw an individual, not the
16 kid playing with the game box or the gaming console, but
17 another individual run up the steps. And I yelled, 'Up the
18 steps; up the steps.'" The agents on the main level aren't
19 going to follow because they don't want to get caught in a
20 cross fire with the agents that are coming upstairs.

21 So then you're going to hear from the agents who came up
22 through the front door. And they entered shortly after they
23 heard the agents on the bottom enter. And what do they see?

24 You'll hear from Kevin Smith and you'll hear from Steven
25 Smith. And they will tell you that they encountered none

1 other than the defendant on that main floor; that when they
2 saw the defendant, he was kneeled down on the floor, and he
3 had his fingers on a laptop and was ordered, "Get away from
4 the laptop, remove yourself from the laptop," and he did not
5 comply.

6 He had to be physically extracted or removed from the
7 laptop by Agent Smith. I know there's two Smiths; this will
8 be Agent Steven Smith. And he will tell you that at the time
9 that he took the defendant off that laptop, the defendant was
10 downloading from the Tor network; that they were able to
11 determine what was being downloaded from the Tor network, and
12 they were able to see that there was a file downloading from
13 the Tor network.

14 You will learn that that file came from the OnionPedo
15 Video Archive. So in other words, it's a pedo video archive
16 downloading; it's an image of child pornography.

17 So that's where the defendant was at the time that they
18 entered from the front, having recently left from downstairs,
19 making a beeline up to the main level, kneeling at his
20 computer, attempting -- probably in all likelihood -- to
21 delete whatever images were downloading to that computer.

22 That computer was taken from him; that laptop computer is
23 taken from him. It is taken into custody by the Federal
24 Bureau of Investigation, and it is examined.

25 You will hear from an individual by the name of Ray Hsu,

1 H-s-u. He's a forensic examiner for the FBI. And he can tell
2 you what was found after a forensic review on the computer,
3 the computer on the main floor of the defendant's residence,
4 the computer that the defendant had run from the downstairs
5 level to the upstairs level upon hearing people enter his
6 house, and that he physically had to be removed from as it was
7 downloading an image of child pornography.

8 You'll learn from Mr. Hsu that the laptop computer taken
9 from his hands had references to both fuckchrist and
10 PTasseater on it. You'll learn that it had the Tor browser,
11 which is a ways or means of accessing the Tor network; and
12 that it had significant history of browsing Tor sites,
13 including PedoBook.

14 You will learn that on that computer was child
15 pornography depicting infants and toddlers, messages relating
16 to the violent sexual abuse of children consistent with the
17 messages that he was sending to Mr. MacMillan, who you'll hear
18 from; consistent with messages he was sending to NE14PTHC, the
19 undercover operative who was running the board for
20 approximately three weeks in November.

21 And as one might expect, those cybersecurity specialists,
22 you're going to learn that there was other programs, eraser
23 programs that were running on that computer. You're going to
24 learn that CCleaner was running and Eraser was running on that
25 computer.

1 Agent Gordon will explain to you a number of things as I
2 indicated before. He's going to tell you -- because
3 presumably none of you are experts on this -- where do people
4 go on the Internet when they're looking for child pornography?
5 What means do they use to obtain that child pornography? What
6 terms do they use in order to obtain child pornography? He's
7 going to explain to you what PTHC means, as well as other
8 terms that are relevant to the investigation of these
9 individuals.

10 You will see the footprints that were left behind by the
11 defendant on the board as it was ran -- or run, I'm sorry, by
12 the FBI. You will see when the defendant registered on the
13 computer, how he chose his user name, what he typed in as his
14 user name, how he chose his display name, what he typed in as
15 his display name.

16 You'll see that he cultivated a persona, one that took
17 pleasure in the rape and killing of very, very young children.
18 You'll see the public and the private groups that he joined --
19 we talked about those a little bit earlier -- thus acting in
20 community and concert with other individuals who shared his
21 interests or had like interests.

22 You'll see the dates and times that he accessed PedoBook.
23 You'll see where he went on PedoBook. Agent Gordon is going
24 to be able to show you how it is he knows that it was
25 PTasseater or fuckchrist who went to a particular place on the

1 board. And he's going to be able to show you what that place
2 looked like to anybody who was using at that time or using
3 that board at that time. So you're going to see it from both
4 sides, where he went and what was being displayed to him.

5 You're going to see screenshots of actual private
6 messages sent by the defendant. You're going to see -- well,
7 you're going to see a lot over the next day or so from Agent
8 Gordon.

9 You're going to see the specific images on November 21st
10 and November 26th as well as December 4th and December 8th of
11 2012 where the defendant accessed child pornography with the
12 intent to view it and what it is he would have been able to
13 view and, in fact, did view at that particular time.

14 PedoBook was -- well, I think we've covered enough as far
15 as an opening and what you're going to see over the next
16 couple of days.

17 At the conclusion of this trial, after the evidence has
18 been introduced, after you've had an opportunity to receive
19 all of the evidence, we're going to have another opportunity
20 to appear before you. And at that time, we're going to be
21 coming back before you and asking you to return a verdict of
22 guilty.

23 Thank you very much.

24 THE COURT: Thank you, Mr. Norris.

25 We will now hear the opening statement by defense

1 counsel, Mr. Berry.

2 MR. BERRY: May it please the Court, counsel.

3 Opening statements are the attorneys' opportunity to tell you
4 what they believe the evidence will be. What we say in our
5 opening statements is not evidence. And I ask you to listen
6 to the evidence and make your decision at the end of this
7 case.

8 I believe the evidence will show that Mr. DeFoggi worked
9 in Washington, D.C. -- in the D.C. area for the Department of
10 Health & Human Services in the areas of network security and
11 technology.

12 He doesn't deny that he used The Onion Router or Tor. In
13 fact, The Onion Router was used legally in the past and is
14 currently not illegal to use. The Onion Router was developed
15 by the Department of Defense, funded by the U.S. government.
16 It has approximately 36 million users. And Mr. DeFoggi found
17 it professionally intriguing. He saw it as a security threat
18 and wanted to learn how to defeat it.

19 Some of the things that we all have become familiar with
20 over the last few years WikiLeaks, Edward Snowden, Internet
21 anonymity used to leak secrets and other information was
22 something that intrigued Mr. DeFoggi. It was something that
23 he was passionate about. He was concerned about security
24 threats. That was part of his job; that was part of his life.

25 The government will engage [sic] that Mr. DeFoggie

1 engaged in some type of fantasy chat on PedoBook and used the
2 names fuckchrist or PTasseater. The government has charged in
3 Counts IV through VII that somehow links that fuckchrist may
4 have clicked were accessing or downloading or possessing child
5 pornography.

6 However, the facts of this case will demonstrate the
7 person using the name fuckchrist did not have a role in
8 creating, operating, or administering the PedoBook website. I
9 don't believe the evidence is going to show there's going to
10 be references to a person -- goes by the name fuckchrist or
11 PTasseater -- publishing any child pornography materials on
12 the PedoBook website.

13 At the end of the case, there will be some fantasy chat
14 and other information provided by the government, but it will
15 not be sufficient to convict on the count of a child
16 exploitation enterprise. And the judge will instruct you on
17 the law on that and what the government has to prove. And
18 some of that will have to do with a certain amount of persons
19 working in concert together. And you'll get all that
20 instruction at the end. And the law comes from the judge and
21 not from us, the attorneys.

22 But in the end, there will be not enough information to
23 show the person who used those names was guilty of any child
24 exploitation enterprise. The government will also not prove a
25 conspiracy or agreement with this fantasy chat.

1 Finally, that child pornography alleged to have been in
2 the possession of fuckchrist in Counts IV through VII you'll
3 find were not found on any device, electronic or otherwise,
4 belonging to Mr. DeFoggi.

5 At the end of this case, I will ask you to think about
6 all the evidence that the government has presented, think hard
7 about it, look at whether they have met their burden of
8 proving the case beyond a reasonable doubt. And then at the
9 end of this case, I will ask you to find Mr. DeFoggi not
10 guilty on all counts.

11 Thank you.

12 THE COURT: Thank you, Mr. Berry.

13 The government may call its first witness.

14 MR. NORRIS: We will call Special Agent Jeffrey
15 Tarpinian.

16 THE COURT: If you will please come forward to the
17 courtroom deputy, she will swear you in.

18 JEFFREY TARPINIAN, PLAINTIFF'S WITNESS, SWORN

19 COURTROOM DEPUTY: Oh, sorry. Please state your name
20 for the record.

21 THE WITNESS: Jeffrey Tarpinian.

22 COURTROOM DEPUTY: Please spell your last name.

23 THE WITNESS. T-a-r-p-i-n-i-a-n.

24 THE COURT: Mr. Norris, you may inquire.

25 MR. NORRIS: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. NORRIS:

Q. Sir, would you state your name.

A. Jeff Tarpinian.

Q. And how are you employed?

A. I'm a special agent with the Federal Bureau of Investigation.

Q. And how long have you been employed as a special agent?

A. Just over 26 years.

Q. Where are you currently assigned?

A. I'm assigned to the Omaha division of the FBI.

Q. And what are your duties and responsibilities with the Omaha division?

A. I am part of a child exploitation task force. And specifically, I investigate crimes against children, more specifically on child pornography matters.

Q. How long have you worked child exploitation and child pornography cases for the FBI?

A. Approximately five years.

Q. How many of these investigations have you participated in during those -- that approximately five-year period?

A. Approximately 100.

Q. What other types of investigations have you been involved with with the FBI both in Omaha as well as any previous service with the FBI?

1 A. For the past 26 years, I've been involved in narcotics
2 investigations, white collar matters, organized crime and
3 public corruption.

4 Q. And have you been assigned to any other offices besides
5 Omaha?

6 A. Yes, the Houston office.

7 Q. Did you become involved in the investigation of a child
8 pornography board hosted here in Nebraska?

9 A. I did.

10 Q. And when was that?

11 A. I became involved in March of 2012.

12 Q. Where did the information come from or originate from?

13 A. It originated from the Dutch National Police and
14 specifically their high technology crime unit.

15 Q. Where did they provide that information to?

16 A. They originally provided it to our FBI headquarters.

17 Q. Okay. And once it's provided to FBI headquarters, is it
18 then disseminated to the field?

19 A. Yes, it was.

20 Q. Okay. As well as other agents and headquarters?

21 A. That's correct.

22 Q. Was a case agent designated at or about this time?

23 A. Yes.

24 Q. Who was the case agent?

25 A. Myself.

1 Q. What is a case agent? Can you explain to the members of
2 the jury what a case agent does?

3 A. The case agent is the individual in charge of the overall
4 scope and direction of the investigation and determines what
5 investigative evidence will take place.

6 Q. So the lead that came from the Dutch national police, was
7 it then shared with you?

8 A. Yes, it was.

9 Q. And what was the nature of that lead?

10 A. The Dutch National Police had identified hidden services
11 on the Tor network.

12 Q. And did they indicate where they had identified that --
13 those hidden services?

14 A. Yes. They had identified those hidden services being
15 hosted in the Omaha, Nebraska, area.

16 Q. I want to direct your attention to a couple of terms you
17 just used, the first one being "hidden services". Can you
18 explain for the members of the jury what a hidden service is?

19 A. Yes. A hidden service is a website on the Tor network.

20 Q. Can you analogize it to, perhaps, something that they
21 would be more familiar with?

22 A. Yes. It's simply just like a website on the regular
23 Internet, if you will, such as CNN or ESPN. Hidden services
24 are just websites that you can access only on the Tor network.

25 Q. You just used the term "Tor network". That's the second

1 term I was going to ask of you. Are you familiar with the Tor
2 network?

3 A. Yes.

4 Q. Through this investigation?

5 A. That's correct.

6 Q. Had you, prior to this lead that came from the Dutch
7 National Police, had any experience with the Tor network?

8 A. No, I had not.

9 Q. What is the Tor network?

10 A. It is a worldwide network that enables an individual to
11 search or surf the Internet anonymously.

12 Q. And how is that accomplished, if you know?

13 A. That is accomplished through, number one, accessing the
14 Tor network; and then the Tor network routes your
15 communications through a series of computers or a network of
16 computers so that the site that you go to does not reveal the
17 true IP address of the user.

18 Q. Okay. Is the hidden service also protected from users as
19 far as the true IP?

20 A. It is.

21 Q. What is an IP, and why is an IP significant to law
22 enforcement?

23 A. An IP address is an Internet Protocol address. It's a
24 numerical number that identifies a device on a computer
25 network.

1 It would be comparable to a telephone number as to
2 specifically identifying a device on a network.

3 Q. In, I guess, short, brief terms, can you describe what
4 problems are presented to law enforcement if an investigation
5 involves the Tor network?

6 A. Yes. The difficulty is to identify a true location of a
7 user, in this case, of a website. The normal investigative
8 avenues for an investigator are not available.

9 Typically, we can serve legal process on a website and
10 get what we call their IP logs, IP addresses that have visited
11 that site. Using the Tor network, users obfuscate their true
12 IP address because, again, it is routed through this network
13 of voluntary computers, if you will.

14 And at the end, when that user visits that website on the
15 Tor network, his or her IP address, true IP address, is not
16 made available to that website.

17 Q. Thank you. Did you open an investigation in this case?

18 A. We did.

19 Q. Who was the initial target of the investigation?

20 A. Aaron McGrath.

21 Q. Why was he the target?

22 A. Because one of the IP addresses provided by the Dutch
23 National Police resolved to a residence in West Omaha where he
24 resided.

25 Q. What was Mr. McGrath's role with the website?

1 A. We determined that he was the administrator of the
2 website.

3 Q. You indicated that you knew that he lived West Omaha?

4 A. Correct.

5 Q. Were you able to determine where he worked?

6 A. Yes, we were.

7 Q. And how were you able to determine that?

8 A. Two ways; number one, additional IP addresses that we
9 were provided by the Dutch resolved to data centers in
10 Bellevue, Nebraska.

11 And just through open record searches, Department of
12 Labor searches, we were able to determine McGrath resided at a
13 data center -- was employed at a data center in Bellevue.

14 Q. Where was the data center located, other than Bellevue;
15 where in Bellevue, not a specific address?

16 A. It was located in the old Southroads Mall in Bellevue.
17 And the name of the company he was employed with is Perigon
18 Networks.

19 Q. You've used the term "data center". Can you describe
20 what Mr. McGrath's job was and what a data center is?

21 A. A data center is a business that has a series of racks of
22 servers, servers being just powerful computers. They host
23 data on those servers for customers that either can't or don't
24 have the capability of hosting that data at their own
25 facility.

1 So literally, a data center hosts data. And Mr. McGrath
2 facilitated that.

3 Q. Have you also heard of a data center as a server farm?

4 A. Yes.

5 Q. Did you develop a plan involving Mr. McGrath and this
6 data center, specifically the server that would have been
7 hosting PedoBook?

8 A. Yes.

9 Q. Tell us about the plan you had.

10 A. We had planned to do almost simultaneous search warrants
11 at Mr. McGrath's residence in West Omaha and then execute a
12 search warrant at his place of business where we believed a
13 server was located hosting the child pornography website.

14 Q. What did you plan to do with the server hosting the child
15 pornography website once it would have come into your
16 possession?

17 A. We planned to monitor it for a period of time.

18 Q. Why was it desirable for you to monitor or operate this
19 website after seizing it?

20 A. So we could attempt to determine the true identity of the
21 users of the website who were viewing and distributing child
22 pornography.

23 Q. Did this plan require approvals over your level?

24 A. Yes.

25 Q. And what levels did it require approval from?

1 A. It required approval of the executive management of the
2 FBI in Washington, D.C. It required the approval of executive
3 management at the Department of Justice.

4 Q. Okay. Did it also require court approval?

5 A. Yes, it did.

6 Q. Why?

7 A. Because we were going to be monitoring content on the
8 website.

9 Q. And by "content," what do you mean?

10 A. Actual information or data that was being put on --
11 uploaded onto that website and being able to monitor real-
12 time messages or conversations between users.

13 Q. Are you familiar with the term "Title III warrant"?

14 A. Yes.

15 Q. Can you describe for the members of the jury what you
16 understand a Title III warrant to be?

17 A. Yes. A Title III warrant, if signed by a district court
18 judge, would authorize law enforcement to monitor real time --
19 well, in this case, the activity on a website, or if it was in
20 the case of a telephone, real-time content of telephone
21 conversations.

22 Q. Did you ultimately obtain court approval through a
23 Title III in this particular investigation?

24 A. We did.

25 Q. Did FBI senior management or DOJ senior management place

1 limits on your plan?

2 A. They did.

3 Q. And tell us what those limits were.

4 A. Those limits entailed us -- us, being law enforcement --
5 to monitor the website 24 hours a day, seven days a week.

6 Q. Okay. And why were you monitoring and what were you
7 looking for?

8 A. We were monitoring in an attempt to identify true name --
9 or true locations of users of the website. But just as
10 importantly, we were trying to identify individuals that we
11 thought may be ready to hurt or harm kids. If we saw activity
12 on the website that made statements to the effect of harming
13 kids, we made an attempt to identify those individuals, either
14 by engaging them in conversation or other means.

15 Q. How did this monitoring take place, what type of
16 manpower, how was it done?

17 A. We had a schedule of law enforcement personnel, both FBI
18 and nonFBI law enforcement. And we set up schedules. And
19 from the time that we took possession of the server hosting
20 the website, we had someone physically there in front of a
21 screen monitoring that until it was shut down.

22 Q. After you obtained approval, did you obtain search
23 warrants for Mr. McGrath's residence?

24 A. We did.

25 Q. And did you also seek search warrants for his home?

1 A. Yes.

2 Q. When did you seek a search warrant for his residence?

3 A. November 9th of 2012.

4 Q. And who did you seek that from?

5 A. A judge here in the District of Nebraska.

6 Q. And when did you seek the search warrants for his place
7 of business?

8 A. Shortly thereafter. I don't recall the exact date.

9 Q. Did you have both search warrants in hand when a plan was
10 made to execute them?

11 A. Yes.

12 Q. When was the search warrant on the residence executed?

13 A. November 15th of 2012.

14 Q. And when was the search warrant on the place of business
15 executed?

16 A. The same day.

17 Q. What concerns did you have relating to executing the
18 warrant in what specific order?

19 A. Our concern with executing the search warrant at
20 Mr. McGrath's house was if his computer either was not on or
21 he was not logged in, because of his IT background, that there
22 may be encryption or security software on there that we
23 wouldn't be able to gain access to any of the devices in his
24 house.

25 Q. So were you concerned about destruction of evidence?

1 A. Yes.

2 Q. Were you concerned about your ability to run the server
3 if the server was functionable?

4 A. Yes. And that was -- as stated previously, one of our
5 goals was to monitor the child pornography website. And if we
6 didn't get access to Mr. McGrath's computers or devices, that
7 that may limit or nullify our ability to do that.

8 Q. Is that why it was important for you to find him
9 administering on the Tor network to a board and catch him
10 while he was doing that?

11 A. Yes. That was our goal, and we took steps to ensure that
12 we were successful.

13 Q. Why execute at the West Omaha household or home of
14 Mr. McGrath before executing on the server farm?

15 A. A couple different reasons. Number one, if we executed
16 at his place of business beforehand, he may get notified which
17 would ruin our element of surprise, if you will.

18 And then the information that we obtained initially from
19 our search of Mr. McGrath, we felt may be beneficial to the
20 execution of the search warrant at the business.

21 Q. Given the concerns that you had with regard to possible
22 destruction of evidence and wanting to get the laptop while it
23 was open and administering, did you request a specific type of
24 warrant when you obtained the warrant for his residence?

25 A. We did.

1 Q. What type of warrant did you request?

2 A. It was called a no-knock search warrant.

3 Q. And what is a no-knock search warrant?

4 A. It authorizes law enforcement, in this case the FBI, to
5 enter the residence without knocking and announcing our
6 presence beforehand.

7 Q. I want to direct your attention then to the 15th of
8 November when you executed the warrant. What time did you
9 execute on the residence?

10 A. Approximately 4:45 p.m.

11 Q. Was Mr. McGrath home at that time?

12 A. He was.

13 Q. Was it important for him to be home before you executed
14 the warrant?

15 A. Yes.

16 Q. And how did you know that he was home?

17 A. Two different ways. We had physical surveillance set up
18 at his residence so we actually saw him arrive at the
19 residence and get out of his vehicle and enter the residence.

20 And then we also became aware that he logged on as the
21 administrator to a child pornography website.

22 Q. Was there an FBI agent who was watching that FBI -- or
23 monitoring that?

24 A. Yes. We had law enforcement personnel on the child
25 pornography website so we could see that the administrator,

1 who we knew was Mr. McGrath, had logged on shortly after he
2 arrived at home.

3 Q. When you say shortly after he arrived home, approximately
4 how much time elapsed before agents saw him enter the house
5 and before other agents notified you that he was on the Tor
6 network?

7 A. I would estimate less than ten minutes when we got that
8 notification.

9 Q. So you and other agents decided to make an entry into the
10 residence at approximately 4:45 p.m.?

11 A. That's correct.

12 Q. How did you enter the home?

13 A. We entered through an open sliding glass door at the rear
14 of the house.

15 Q. Who entered first?

16 A. I did.

17 Q. As you walked through the sliding glass door at the rear
18 of the house, what level are you on?

19 A. We were on the main level.

20 Q. Did you see anything on the main level?

21 A. No, we did not.

22 Q. Where did you go after the main level?

23 A. We walked up the stairs to the second floor.

24 Q. And describe the second floor as far as the number and
25 nature of the rooms up there.

1 A. It's a relatively small hallway. There were -- I want to
2 say three rooms, plus a bathroom. Only one of the rooms had
3 the door closed, and we checked and it was locked.

4 Q. How would you describe your approach at this time as far
5 as the level of noise that was being made?

6 A. Still surreptitious, if you will, so we were very
7 discreet, very quiet. Again, our goal was to get Mr. McGrath
8 and access that laptop before he had a chance to turn it off.

9 Q. Upon noticing that there is a bedroom door that is
10 locked, what decision is made next?

11 A. A decision very quickly is made to forcibly enter the
12 room.

13 Q. And was that done?

14 A. Yes, it was.

15 Q. How was that accomplished?

16 A. By kicking in the door.

17 Q. And when you kicked -- when the door was kicked in, who
18 was the first individual into the bedroom?

19 A. I was.

20 Q. Can you describe what you saw as the door opened and you
21 entered into the bedroom?

22 A. I saw Aaron McGrath laying on his bed with the covers
23 pulled up to his waist. He had a pair of headsets -- yeah, a
24 pair of headsets on, appearing to listen to music. You could
25 hear the music coming from the headset.

1 Q. Do you believe that assisted you in your surreptitious or
2 stealth entry into the upstairs bedroom anyway?

3 A. Yes, absolutely.

4 Q. Were you able to observe the laptop that you were hoping
5 to seize?

6 A. Yes. Mr. McGrath had a laptop on his lap, actually with
7 his hands on the keyboard at the time we entered the room.

8 Q. So the computer was open?

9 A. Computer was open, yes.

10 Q. And his hands were on the keyboard?

11 A. Correct.

12 Q. Upon noticing this, what did you do or say?

13 A. I ordered him to remove his hands from the laptop. And
14 then I made steps towards him to take possession of the
15 laptop.

16 Q. Tell us how you ordered him to remove his hands.

17 A. I mean, it was in a loud yelling, you know, authoritative
18 voice, if you will, that there was a sense of urgency; that it
19 wasn't, "Close the laptop, do whatever." It was now. We
20 need, number one, to see his hands clearly from behind, the
21 part of the laptop that was obfuscating his hands, and we need
22 to do it right now.

23 Q. He was yelled to let go of the laptop?

24 A. Right.

25 Q. How were you and others on the residential or home entry

1 team, how were they dressed?

2 A. We were clearly identified in law enforcement FBI
3 personnel. I had my FBI vest on that has a banner, if you
4 will, that says "FBI". I believe I had a raid jacket on that
5 also said "FBI". I would have had my badge on my belt.
6 That's clearly visible, in addition to verbal identification,
7 that we were law enforcement.

8 Q. So what verbal identification of law enforcement was made
9 and in what sequence in ordering him to release the computer,
10 let go of the computer?

11 A. I would have identified myself verbally as being with the
12 FBI prior to ordering him to remove his hands from the laptop.

13 Q. Did he comply with your order to remove his hands from
14 the laptop?

15 A. Not initially.

16 Q. What did he do?

17 A. He started to close the laptop.

18 Q. How far away from him were you as he started to close the
19 laptop?

20 A. I was probably just at the edge of the bed so I was
21 probably three to four feet from the him.

22 Q. What did you do?

23 A. I quickly approached him, if you will, and physically
24 removed the laptop from him.

25 Q. When you removed the laptop from him, what was the status

1 of the laptop at that time?

2 A. It was still on, but the screen saver had activated.

3 Q. So it wasn't shut down?

4 A. No, it was not shut down.

5 Q. And what were you able to do with that particular laptop
6 after seizing it?

7 A. We were able to gain access to it and determine what
8 sites that he was on at the time it was seized.

9 Q. Were you able to maintain the capacity to then run the
10 server once the servers were seized?

11 A. Yes.

12 Q. Were you able to photograph the screens that were open on
13 that laptop at the time that you gained entry and seized it?

14 A. Yes. We took pictures of the screens that showed the
15 different sites he was on.

16 MR. NORRIS: Your Honor, may I approach?

17 THE COURT: Yes, you may.

18 BY MR. NORRIS:

19 Q. Agent Tarpinian, I've handed you Exhibit 68. Do you
20 recognize that?

21 A. Yes.

22 Q. What is it?

23 A. That is a picture of a screen of PedoBook, the child
24 pornography website, that was on and open at the time we
25 seized the laptop from Mr. McGrath.

1 Q. Is it a true and accurate depiction of the website,
2 PedoBook, at the time at which you were able to seize the
3 administrator's laptop from Mr. McGrath?

4 A. Yes. Again, for clarification, it was one of the sites
5 he was on at the time it was seized.

6 As you can tell at the bottom of that picture where it
7 shows all the different open sites that he was on; but yes,
8 this is one of those.

9 MR. NORRIS: Your Honor, I would offer Exhibit 68.

10 MR. BERRY: Your Honor, I would object on relevance
11 and 403.

12 THE COURT: Overruled. Exhibit 68 is received.

13 MR. NORRIS: Your Honor, if I may retrieve the
14 exhibit and publish it?

15 THE COURT: You may.

16 BY MR. NORRIS:

17 Q. I've just now put on the monitor, Agent, Exhibit 68. Is
18 that what you were referring to as the PedoBook that was
19 open -- the PedoBook page that was open at the time in which
20 you obtained the computer from the administrator, Mr. McGrath?

21 A. Yes.

22 Q. Can you read for the members of the jury the bottom line
23 of PedoBook, the last entry on that page, please?

24 A. "Fuckchrist is now a friend with" -- and I'm going to
25 struggle with that. I can't really see that name. I believe

1 it's Raymer (phonetic). I can't read that -- the name.

2 Q. If I brought it up to you, would you be able to read it
3 clearer on the --

4 A. Yes.

5 Q. Okay.

6 MR. NORRIS: May I approach?

7 THE COURT: You may.

8 A. "Fuckchrist is now a friend with" -- again, I'm going to
9 struggle here a little still, Ray -- Raymer (phonetic); last
10 part of that is, I believe, Himura. And it says 3 minutes
11 ago.

12 BY MR. NORRIS:

13 Q. All right. After you seized the laptop, what did you do
14 next?

15 A. After we seized the laptop, we notified the law
16 enforcement personnel that was at Mr. McGrath's place of
17 employment that they could go ahead and execute the search
18 warrant down there.

19 Q. And where is "down there"?

20 A. Down there is Perigon Networks, the data center we
21 discussed earlier, which is located at the old Southroads Mall
22 in Bellevue, Nebraska.

23 Q. Did you, in fact, go to Bellevue?

24 A. I did.

25 Q. And you went there from the West Omaha address of

1 Mr. McGrath?

2 A. Correct.

3 Q. What did you do upon your arrival in Bellevue at Perigon?

4 A. I oversaw the execution of the search warrant down there,
5 and then we made a determination of how to go forward after
6 the search warrant was executed.

7 Q. Were you able to, on November 15th, serve -- I'm sorry,
8 seize the server that housed PedoBook?

9 A. We were. I think it was a continuation between November
10 15th into November 16th when the seizure took place.

11 Q. But it was actually in the FBI's control and nobody else
12 could have access to it on February [sic] 15th, correct?

13 A. That's correct.

14 Q. When were you able to extract the server and bring it
15 from Perigon to an alternate location?

16 A. It was brought to an FBI facility, I believe, on November
17 18th of 2012.

18 Q. So when you encountered the server that housed PedoBook
19 at Perigon, did you take it offline or remove it?

20 A. Yes.

21 Q. What did you do after you removed it? Where did you take
22 it?

23 A. We took it to a secured FBI facility here in Omaha.

24 Q. For what purpose?

25 A. To monitor the activities on that particular site in an

1 attempt to identify the users who were, you know, viewing and
2 distributing child pornography.

3 Q. Did you seek a Title III authorization from the District
4 Court -- the United States District Court to operate PedoBook
5 on November 18th then?

6 A. We did.

7 Q. Were you granted that authorization?

8 A. Yes.

9 Q. And during what period did the FBI operate and monitor
10 PedoBook?

11 A. From November 19th of 2012 until December 8th of 2012.

12 Q. Just shy of three weeks?

13 A. Correct.

14 Q. What happened on December 8th of 2012?

15 A. We discontinued monitoring the site and shut it down.

16 Q. When you say you shut it down, did it basically go dark?

17 A. Yes.

18 Q. Was there any access at that point to PedoBook by
19 anybody?

20 A. No.

21 Q. At any time while the FBI operated and monitored
22 PedoBook, did the FBI post any images of child pornography
23 onto PedoBook?

24 A. No.

25 Q. How many members were there of PedoBook as of December

1 8th, 2012, when the FBI shut it down?

2 A. In excess of 8,000.

3 Q. By operating and monitoring PedoBook, was the FBI
4 successful in identifying any other members?

5 A. We were.

6 Q. And did the identification of some of these members
7 result in prosecutions?

8 A. They did.

9 Q. Was the administrator, Aaron McGrath, prosecuted?

10 A. Yes, he was.

11 Q. Did you identify some of the other PedoBook members who
12 the FBI ultimately identified resulting in their prosecution?

13 A. Yes.

14 Q. Was the defendant, Mr. DeFoggi, one?

15 A. Yes, he was.

16 Q. How about Jason Flanary?

17 A. Yes, he was.

18 Q. Can you describe -- I don't need you to describe what
19 Mr. Flanary was charged with or the circumstances of his
20 arrest, but can you describe for the members of the jury what
21 his display name and user name on PedoBook were?

22 MR. BERRY: Objection, relevance, 403.

23 MR. NORRIS: Goes to --

24 THE COURT: Relevance?

25 MR. NORRIS: -- concert, other members on the board.

1 THE COURT: Overruled.

2 A. Mr. Flanary's display name was iceman6791.

3 BY MR. NORRIS:

4 Q. Are you familiar with an individual by the name Charles
5 MacMillan?

6 A. Yes, I am.

7 Q. Was he on PedoBook?

8 A. He was.

9 Q. And he was identified by law enforcement and arrested?

10 A. He was.

11 Q. What were his display and user names?

12 MR. BERRY: Objection, relevance, 403.

13 THE COURT: Overruled. He may answer.

14 A. His user name was noonewillknow321. And his display name
15 was toddler lover.

16 BY MR. NORRIS:

17 Q. Can you spell toddler lover or --

18 A. It was abbreviated. It was t-d-l-r-l-u-v-r.

19 Q. Was a Wesley Cameron identified on PedoBook --

20 A. He was.

21 Q. -- and prosecuted?

22 A. Yes.

23 Q. And what was his user and display name?

24 MR. BERRY: Objection, relevance, 403.

25 THE COURT: Overruled. He may answer.

1 A. Newguy689.

2 BY MR. NORRIS:

3 Q. And did he have a display name that went with it?

4 MR. BERRY: Same objection.

5 THE COURT: Overruled. He may answer.

6 A. That's the only name I'm aware of.

7 BY MR. NORRIS:

8 Q. How about Zachary Austin?

9 A. Yes, I'm aware of him.

10 Q. And was he likewise prosecuted in the District of
11 Nebraska?

12 A. Yes.

13 Q. And what were his display and user names?

14 MR. BERRY: Objection, relevance, 403.

15 THE COURT: Overruled. He may answer.

16 A. Slut couple. And "couple" was abbreviated;
17 s-l-u-t-c-p-l. And then kinky underscore couple, again couple
18 abbreviated c-p-l.

19 BY MR. NORRIS:

20 Q. Were you able to identify members of foreign countries
21 that belonged to PedoBook?

22 A. We were.

23 Q. What was done with this information?

24 A. The information was provided to federal law enforcement
25 agencies in those particular countries.

1 Q. Were you also able to identify and prosecute individuals
2 who were not members but visited PedoBook?

3 A. We were.

4 MR. NORRIS: Your Honor, if I may approach again?

5 THE COURT: You may.

6 BY MR. NORRIS:

7 Q. I'm going to hand you what's been marked as Exhibit 74
8 and Exhibit 75.

9 Beginning with Exhibit 74, do you recognize that?

10 A. I do.

11 Q. What is it?

12 A. It's the residence of Aaron McGrath back in 2012.

13 Q. Okay. And without telling us a specific address, can you
14 tell us the neighborhood where it was located?

15 A. The Cottonwood neighborhood of West Omaha.

16 Q. Which is located -- for those familiar with Omaha, would
17 be located near what schools, what area, what parks, whatever
18 is easiest for you?

19 A. It would be on the -- it's across the street from
20 St. Wenceslaus Church on the north side of Pacific, just east
21 of 156th.

22 Q. Is that a true and accurate depiction of the residence at
23 the time you would have executed your warrant on November 15th
24 of 2012.

25 A. Yes.

1 MR. NORRIS: Your Honor, I would offer Exhibit -- I
2 believe I said 74.

3 MR. BERRY: No objection.

4 THE COURT: Exhibit 74 is received.

5 BY MR. NORRIS:

6 Q. I'm going to ask you Exhibit 75, is that currently before
7 you?

8 A. Yes.

9 Q. And what is Exhibit 75?

10 A. It's a picture of the outside of Perigon Networks, one of
11 the data centers that we discussed.

12 Q. Associated with Mr. McGrath?

13 A. Correct.

14 Q. And was that where the other warrant was executed on
15 November 15th, 2012?

16 A. Yes.

17 Q. And is that a true and accurate depiction of the business
18 of Perigon as of November 15th of 2012?

19 A. It is.

20 Q. And where is it located? Again, I don't need a specific
21 address, just the area.

22 A. It is part of the old Southroads Mall in Bellevue,
23 Nebraska.

24 Q. All right.

25 MR. NORRIS: I would offer Exhibit 75, your Honor.

1 MR. BERRY: No objection.

2 THE COURT: Exhibit 75 is received.

3 MR. NORRIS: Your Honor, if I may ask the agent to
4 write "Omaha" as well as "Bellevue" -- I'm sorry, "Omaha" on
5 74, which is the residence, and on 75, if there are no
6 objections to that, I'll have him write "Bellevue," just so we
7 have the city straight.

8 THE COURT: Any objection?

9 MR. BERRY: That's fine. You could just reoffer
10 them.

11 THE COURT: The record will reflect that the witness
12 is writing the word "Omaha" --

13 MR. NORRIS: On 74.

14 THE COURT: -- on 74 --

15 MR. NORRIS: Which is the residence.

16 THE COURT: -- and "Bellevue" on 75.

17 MR. NORRIS: Yes, your Honor. Thank you.

18 Then I don't have any further questions of this witness
19 but would like to just publish 74 and 75 very briefly on the
20 ELMO before tendering the witness for cross.

21 May I approach to retrieve those?

22 THE COURT: You may.

23 MR. NORRIS: Your Honor, I have placed Exhibit 74 --
24 your Honor, if the record will reflect I've now published
25 Exhibit 74, and will now publish Exhibit 75.

1 And then I would tender him for cross.

2 THE COURT: Thank you. You may cross-examine,
3 Mr. Berry.

4 MR. BERRY: Can I just have a moment, your Honor?

5 (Off-the-record discussion had.)

6 CROSS-EXAMINATION

7 BY MR. BERRY:

8 Q. Mr. Tarpinian, it's your understanding the FBI ran the
9 PedoBook site from November 19th to December 8th, correct?

10 A. Yes.

11 Q. And the FBI did not run the PedoBook website prior to
12 November 19th of 2012, correct?

13 A. Correct.

14 Q. You indicated that Mr. McGrath -- it was your
15 understanding Mr. McGrath was the administrator of the
16 PedoBook website prior to November 19th; is that correct?

17 A. Yell.

18 Q. You indicated that the Dutch police first notified you
19 about PedoBook, correct -- or first notified United States law
20 enforcement about PedoBook, correct?

21 A. Yes.

22 Q. Do you know how they learned about it?

23 A. During an investigation. The details of that
24 investigation -- I don't know all the details of their
25 investigation, no.

1 Q. Thank you.

2 MR. BERRY: I have no further questions of this
3 witness at this time, your Honor.

4 MR. NORRIS: I have nothing else.

5 THE COURT: All right.

6 Thank you, Mr. Tarpinian. You may stand down.

7 The government may call its next witness.

8 MR. BECKER: Thank you, your Honor.

9 Your Honor, before we call our next witness, the parties
10 have reached a number of stipulations. I would ask to tender
11 one of those and publish to the jury before the testimony of
12 the next witness.

13 THE COURT: You may.

14 MR. BECKER: May I approach with it first? Does your
15 Honor wish to review it?

16 THE COURT: Well, it's -- I guess I'll ask on the
17 record. Why don't you show it to Mr. Berry and I'll ask him
18 if he so stipulates.

19 And is this a stipulation that you're going to want to
20 have as an exhibit that goes back to the jury or simply read
21 to the jury?

22 MR. BECKER: We are going to mark it as an exhibit,
23 your Honor. This will be Government's Exhibit 76.

24 THE COURT: All right. And Mr. Berry, you've seen
25 Government's Exhibit 76. And do you stipulate to the contents

1 of that?

2 MR. BERRY: I do, your Honor.

3 MR. BECKER: I would note for the record it has been
4 signed by all parties.

5 May I publish it on the ELMO while I read it to the jury?

6 THE COURT: You may.

7 Are you also offering it? Do you want me to receive it
8 as an exhibit?

9 MR. BECKER: Indeed.

10 THE COURT: Exhibit 76 is received. And you may
11 publish it and read it.

12 MR. BECKER: Thank you, your Honor.

13 Publishing the first page of Government Exhibit 76.

14 Comes now the United States, plaintiff, and Timothy
15 DeFoggi, defendant, and stipulate that:

16 1. On November 18, 2012, FBI agents, acting pursuant to
17 a search warrant authorized by the United States District
18 Court for the District of Nebraska, copied and seized a
19 computer server from an Internet hosting facility in Bellevue,
20 Nebraska, in the District of Nebraska. The computer server
21 contained the data and information that formed the PedoBook
22 website.

23 2. From November 19, 2012, until December 8, 2012, the
24 PedoBook website operated at an FBI facility in Omaha,
25 Nebraska. During that time period, user communications on the

1 PedoBook website were monitored by the FBI pursuant to the
2 authorization of the United States District Court for the
3 District of Nebraska.

4 3. The PedoBook website ceased to operate on December 8,
5 2012.

6 4. Exhibits 1 through 4, 6A through 6D, 11, and 69
7 consist of fair and accurate digital copies or "screen shots"
8 of various web pages of the PedoBook website as of December 8,
9 2012, the date it ceased to operate.

10 Publishing the second page, your Honor.

11 Exhibits 5 through 5D and 7 through 9A consist of fair
12 and accurate copies of user data from the PedoBook user
13 account for PTasseater/fuckchrist as of December 8, 2012, the
14 date the PedoBook website ceased to operate. It is not
15 alleged that the defendant, Timothy DeFoggi, had any role in
16 creating, operating, or administering the PedoBook website.

17 THE COURT: And the jury may accept those facts as
18 true, having been stipulated between the parties.

19 MR. BECKER: Your Honor, at this time the government
20 calls Special Agent P. Michael Gordon.

21 THE COURT: Mr. Gordon, if you'll please come forward
22 to the courtroom deputy here on my right, she will swear you
23 in.

24 THE WITNESS: Sure.

25 COURTROOM DEPUTY: Please state your full name for

1 the record and spell your last.

2 THE WITNESS: P. Michael Gordon, G-o-r-d-o-n.

3 P. MICHAEL GORDON, PLAINTIFF'S WITNESS, SWORN

4 THE COURT: You may inquire.

5 MR. BECKER: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. BECKER:

8 Q. If you could please start by stating and spelling your
9 full name for the record.

10 A. P. Michael Gordon, first initial P, middle name Michael,
11 M-i-c-h-a-e-l; last name Gordon, G-o-r-d-o-n.

12 Q. What do you do for a living?

13 A. I'm currently employed by the Federal Bureau of
14 Investigation.

15 Q. How long have you been with the FBI?

16 A. Since March of 1999.

17 Q. What is your current position with the FBI?

18 A. I'm currently a supervisory special agent with the
19 Violent Crimes Against Children Unit, Violent Crimes Against
20 Children Section, FBI headquarters.

21 Q. How long have you held your current position?

22 A. Since approximately March of this year, so five months.

23 Q. What are the duties in that position you've recently
24 obtained?

25 A. Currently I'm tasked with oversight of our online

1 undercover operations as well as different special projects.

2 Q. Can you describe the unit that you work for currently.

3 A. The Violent Crimes Against Children Unit is primarily
4 tasked with the oversight and management of all of the federal
5 criminal violations that are investigated by the FBI related
6 to crimes against children, child sex tourism, online
7 exploitation of children, production and distribution of child
8 pornography.

9 THE COURT: Mr. Gordon, if you could just push the
10 mic back just a -- thank you.

11 MR. BECKER: Thank you, your Honor.

12 BY MR. BECKER:

13 Q. Special Agent Gordon, before moving to your supervisory
14 role, what was your next most recent assignment with the FBI?

15 A. Prior to my current assignment, I was assigned to the
16 Major Case Coordination Unit, formerly known as the Innocent
17 Images Operations Unit. It's an operational investigative
18 squad located within the Violent Crimes Against Children
19 Section.

20 Q. For how long were you in that role?

21 A. From 2007 until March of this year.

22 Q. And what does that unit do?

23 A. That unit's primary function is to serve as the primary
24 investigative element for the violent crimes against children
25 section.

1 The cases that my former unit would investigate would
2 entail highly technical or complicated or sophisticated cases
3 that may not be able to be addressed by one of our individual
4 field offices.

5 Additionally, we served as the primary point of intake
6 for international law enforcement matters, both coming from
7 other law enforcement agencies in different countries, as well
8 as referring larger cases to international partners.

9 Q. And what was your role within that unit?

10 A. For a period of time, I was the case agent for the
11 undercover operation that has operated out of FBI
12 headquarters, as well as being an online undercover agent
13 going online and attempting to locate individuals that were
14 attempting to sexually exploit children.

15 Q. During your time in that unit, did you become a part of
16 the investigation that involved the PedoBook website?

17 A. Yes, I did.

18 Q. Can you describe your other experience with the FBI
19 before you started working with the Innocent Images and
20 Violent Crimes Against Children Unit?

21 A. Yes. Prior to being assigned to the FBI headquarters, I
22 was assigned to the New Orleans field office, once I completed
23 my training at the FBI academy. That would have been in 1999.

24 My first assignment when I was at the New Orleans field
25 office was with the white-collar crime squad, which was

1 primarily tasked with investigating bank fraud, check fraud
2 and wire fraud.

3 During that period I was also the primary Internet fraud
4 liaison or investigator for the squad.

5 After the white-collar crime squad, I was assigned to the
6 computer-crime squad in New Orleans where I went online in an
7 undercover capacity and investigated individuals that would
8 steal and trade individuals' credit card and personally
9 identifying information online and sell it to other
10 individuals.

11 Once I was completed with that assignment, I then went on
12 to investigate various types of computer intrusions and
13 botnets, before I was finally assigned to the New Orleans
14 Innocent Images Undercover Operation in 2004.

15 Q. You mentioned botnets and intrusions. What are those?

16 A. Botnets are basically viruses or malicious code that can
17 be used to infect another individual's computer and then be
18 utilized by individuals to conduct other types of activity.

19 Q. So with respect to, first, just cyber or cyber-
20 facilitated crimes in general, for how long have you been
21 working as an agent in that sort of area?

22 A. Since probably approximately 2001.

23 Q. And with respect to crimes involving the exploitation of
24 children, for how long have you been working as an agent in
25 that area?

1 A. 2004.

2 Q. Can you please tell the jury about your employment and
3 education prior to when you joined the FBI?

4 A. Prior to the FBI, I graduated from the United States
5 Naval Academy with a bachelor of arts in physics. Upon
6 graduation, I was commissioned an officer in the Marine Corps
7 where I served until March of 1999.

8 Q. Did you have any particular technical assignments or
9 experience while working in the Marine Corps?

10 A. My military operational specialty in the Marine Corps was
11 as a tank platoon commander for M1 Abrams tanks, pretty
12 sophisticated pieces of hardware.

13 My final assignment with the Marine Corps was with the
14 Marine Corps Warfighting Lab at Quantico, Virginia, which was
15 a testing and future concepts unit that would look at new
16 technologies, new techniques in order to address future
17 threats 10, 15 years down the line.

18 Q. I'd like to ask you about the training you've received
19 over your time with the FBI. Can you describe the training
20 you've received, first, with respect to the area of cyber
21 crimes and computers?

22 A. With respect to cyber crimes and computers in general,
23 I've completed the four-stage program that the FBI set up and
24 established for cyber career path agents. That training
25 consisted of both in-house classes developed strictly by the

1 FBI relevant to investigative matters, as well as industry-
2 certified and recognized classes, such as A+ and Net+.

3 Q. What are A+ and Net+ classes or certifications?

4 A. A+ certification deals primarily with computers, computer
5 hardware and operating systems and how they function.

6 Net+ primarily focuses on computer networks and how
7 different devices can be set up and configured to communicate
8 over these networks.

9 Q. Have you received training particular to the
10 investigation of child exploitation crimes?

11 A. I have.

12 Q. Can you describe that, please, for the jury?

13 A. The basic training and additional training consisted of
14 attending both the basic and the advanced Innocent Images
15 Online Undercover classes. These classes consisted of
16 providing instruction on how individuals will trade files,
17 images, and communicate online relevant to the exploitation of
18 children.

19 In addition to that information that was provided, there
20 was also additional training on how to capture, record and
21 document various online undercover activities that I would
22 conduct in order for it to be included into a case and
23 eventual trial.

24 Q. Have you worked as an undercover agent with the FBI?

25 A. Yes.

1 Q. For approximately how long or during what time period?

2 A. As an online undercover for Innocent Images since 2004.

3 Q. And can you estimate the number of, first, investigations
4 that you've worked on that involved you acting as an
5 undercover?

6 A. Investigations where I've acted as an undercover,
7 probably well over a dozen.

8 Q. And then are you familiar with the term "undercover
9 session"?

10 A. Yes.

11 Q. What's an undercover session?

12 A. An undercover session is basically how -- when the FBI
13 documents an undercover activity, whether it's -- we go online
14 to chat with someone, to visit a website, or to download files
15 from somebody, each unique interaction would be considered a
16 session.

17 Q. Can you estimate how many sessions you have engaged in
18 while UC with the FBI?

19 A. Probably well over 200 or so.

20 Q. You've talked about the training that you received. Have
21 you been responsible for training others while an employee by
22 the FBI?

23 A. Yes. I have been a primary instructor for both the basic
24 Innocent Images Online Undercover class, as well as the FBI's
25 General Online Undercover class for other crime violations.

1 I've also provided instruction at Internet Crimes Against
2 Children Conferences on the use of peer-to-peer file-sharing
3 software.

4 The training I provided has been provided to both law
5 enforcements within the United States, federal, local, and
6 state, as well as various international entities.

7 Q. When you say "international entities", what are some
8 examples of foreign law enforcement you've done training for?

9 A. I've provided training to law enforcement officials in
10 Romania, Poland, United Arab Emirates, the Phillipines and
11 Thailand.

12 Q. Have you testified previously during your employment with
13 the FBI regarding investigations you've participated in?

14 A. Yes.

15 Q. Does that include testimony regarding cases where you had
16 acted as an online undercover agent?

17 A. Yes.

18 Q. What other sorts of topics have you testified regarding
19 previously?

20 A. Previously I've testified regarding investigations
21 concerning online use groups or Usenets -- basically very old
22 form of bulletin boards to some extent. I've also testified
23 concerning websites and various types of peer-to-peer
24 investigations.

25 Q. Does that include testimony regarding websites that were

1 involved in child exploitation?

2 A. Yes.

3 Q. With respect to your prior experience investigating child
4 exploitation over the Internet, can you describe some of the
5 technologies that offenders have used that you've
6 investigated?

7 A. The different technologies that offenders will use to
8 communicate or trade files over the Internet are pretty much
9 the same technologies that an everyday Internet user would
10 use.

11 They'll use instant messaging, they'll use different
12 types of file-sharing programs, they'll use websites. There
13 have been investigations that I've been involved in with --
14 including Facebook and various other types of just publicly
15 available software.

16 Q. And in terms of your undercover work, what do those
17 multiple forums mean for you in your need to communicate with
18 them?

19 A. It basically means that I have to be fairly familiar with
20 all the different forms of communication that could occur on
21 the Internet. It's hard to stay -- to be masterful of all of
22 them because there's just so many.

23 But you try to make sure that you stay up-to-date and
24 current through either your own research, discussing
25 investigations with other law enforcement, or through further

1 attendance of classes and on-the-job training.

2 Q. Based on your training and experience, Special Agent
3 Gordon, have you become familiar with the operation of
4 computers, the Internet and Internet websites?

5 A. Yes, I have.

6 Q. Have you become familiar with the methods, tactics and
7 operation of offenders producing and trafficking child
8 pornography over the Internet?

9 A. I have.

10 Q. Have you become familiar with the technologies used by
11 offenders who produce and traffic child pornography over the
12 Internet?

13 A. Yes.

14 Q. Have you also become familiar with the terminology used
15 by offenders who produce and traffic child pornography over
16 the Internet?

17 A. I have.

18 Q. Why is it important for you to be familiar with that sort
19 of terminology?

20 A. And if I'm understanding the question right, by
21 "terminology" you're meaning abbreviations and that type?

22 Q. Why don't you tell us. What sort of terminology ends up
23 being pertinent to online undercover work regarding child
24 exploitation suspects?

25 A. Individuals that will trade child pornography on the

1 Internet will often use abbreviations or shortening of things
2 to facilitate the trade of child pornography.

3 For instance, in peer-to-peer investigations, one of the
4 more common search terms that I would use when I was
5 conducting them more frequently would be PTHC. That, based on
6 my experience and training, was short for "preteen hard core".
7 That also, based on my experience with downloading files that
8 contain that, would usually -- or could possibly contain
9 images of an underage minor engaged in some type of sexual
10 activity, usually with some type of penetration.

11 The names themselves obviously are not 100 percent
12 indicative of what the file might contain. But if an
13 individual file had that particular phrase in it, then it
14 would be of more interest to me than one that might say "rose"
15 or "dog" or "car".

16 Q. When you're actually interacting with child exploitation
17 suspects as an undercover, why is it important for you to know
18 that sort of terminology?

19 A. In order to blend in and appear to be part of their
20 community or part of their criminal activity; to blend in,
21 pretty much.

22 Q. How are you able to stay current with your knowledge of
23 those sorts of subjects?

24 A. At this point, it is primarily from ongoing
25 investigations that I'm a part of.

1 It's also from conducting research based on information
2 that we receive from our intelligence analysts, discussions
3 with other law enforcement agencies, both federal, state,
4 local and international, as well as attending classes such as
5 those that are held across the country.

6 Q. Now, have you also become familiar with the names and
7 content of websites that are used to traffic child pornography
8 over the Internet?

9 A. Yes.

10 Q. And how have you obtained that sort of knowledge?

11 A. That type of information is again obtained either through
12 investigation intelligence provided to us through our analysts
13 or most typically through the National Center for Missing and
14 Exploited Children cyber tip reports.

15 Q. And how are you able to keep that basic knowledge
16 current?

17 A. Going out and seeing exactly what the content of these
18 sites are, seeing if the allegations against these sites are
19 accurate, or if the site is just, for lack of a better term,
20 an innocent third party that hosts files and somebody decided
21 to put child pornography up on it.

22 Q. So it's fair to say that as part of your occupation as an
23 online undercover, you have to actually go out and access
24 those websites that might be trafficking in child pornography?

25 A. Yes.

1 Q. Special Agent Gordon, I'd like to switch gears a little,
2 take a step back and ask you some questions more generally
3 about computers and the Internet.

4 A. Okay.

5 Q. Can you start just by giving us a basic explanation of
6 what the Internet is?

7 A. The Internet is basically a system of communications or
8 communication network over which information is passed to
9 different locations around the world. When the Internet was
10 initially established, the devices that would be used for this
11 communication were primarily computers.

12 However, in the last five to ten years, the number of
13 devices that can exchange information over the Internet has
14 increased. Examples of this would be tablets, smartphones,
15 and in more recent years, other common household items like
16 your DVD player, your Blu-ray player, thermostats, security
17 systems, things of that nature.

18 Q. How does an Internet user actually get access to the
19 Internet?

20 A. The typical way an individual will get access to the
21 Internet is they'll establish a contract or request an account
22 through an Internet service provider or ISP.

23 Q. What is an Internet service provider and what does that
24 facilitate?

25 A. An Internet service provider or ISP is basically a

1 centralized organization. Examples of an ISP would be
2 nationally known ones such as Verizon, Sprint, Comcast, Cox.
3 In addition to those, there are smaller regional ISPs that
4 will only provide access in certain areas.

5 The ISPs will basically -- once you establish an account
6 with them, they will -- depending on the type of service that
7 you're being provided, they'll basically run a line to your
8 house and provide you with equipment that will allow you to
9 connect your computer to their equipment. And from there,
10 you'll be able to access the Internet.

11 Q. What's some of that equipment called?

12 A. The primary equipment that you will most likely find in
13 people's houses will be either modems or a combination of
14 modems and routers.

15 Q. And what is an IP address?

16 A. An IP address or an Internet Protocol address could be
17 thought of as a unique telephone number that devices that
18 communicate over the Internet have to have in order for the
19 communications to go through.

20 Q. And who assigns IP addresses?

21 A. For the most part, it is the individual Internet service
22 providers. Individual Internet service providers will be
23 provided a specific block or section of IP addresses that
24 they're allowed to utilize and pass out to their customers as
25 they are needed.

1 Q. Do Internet service providers keep records of what IP
2 address is assigned to what particular customer at a
3 particular time?

4 A. Normally, yes.

5 Q. How is that relevant or important in terms of a criminal
6 investigation?

7 A. For purposes of investigations, the unique nature of the
8 IP address, combined with a specific date and time, would
9 allow an investigator to identify at least the account and the
10 location where some type of criminal activity could have been
11 occurring from.

12 Q. You mentioned the unique nature of the IP address. Can
13 you explain that?

14 A. At any point in time, there will only be one particular
15 IP address that exists on the Internet at any given point in
16 time. The exception to that are things such as internal
17 networks or internal computer networks that individuals have
18 set up in their house or within a business.

19 The unique nature of the IP address assigned to those
20 doesn't really apply on the normal Internet.

21 Q. So when we're talking about a residential Internet
22 subscription, the IP address assigned to that would be a
23 unique one?

24 A. Correct. The IP address that would be actually
25 communicating over the Internet would be unique, but there

1 could be other IP addresses behind that.

2 Q. In basic terms, what is a website?

3 A. A website is essentially a set of files consisting of
4 either images, videos, music, text and a set of instructions
5 that informs a web browser or similar program on how to put
6 these files back together so that a particular website will
7 look correct.

8 Q. Can you just give us an example of a commonly known
9 website?

10 A. CNN.com, ESPN.com.

11 Q. So in terms of the files, the text, all the sort of stuff
12 that makes up that site, where is all of that stuff? Where
13 are all of those files?

14 A. All of those files and the accompanying information that
15 lets your computer reconstruct a website once you've
16 downloaded the information to your computer is essentially
17 located on another computer located either in a company's own
18 facility or in remote data centers or other hosting providers
19 that the companies have contracted out with.

20 Q. And what are those computers that host the stuff that
21 makes up a website called?

22 A. They're commonly referred to in the industry parlance as
23 servers.

24 Q. What are server logs?

25 A. Server logs serve as a record of activity that goes into

1 or out of or actions that are performed by a server or
2 individuals that access a server.

3 Q. How can they be useful in a criminal investigation?

4 A. Depending on the level of logging that is actually
5 enabled by a server or a website, the logs that are maintained
6 could actually give a good representation of what a particular
7 IP address or account did when they accessed the server or
8 they accessed the website.

9 Q. All right. Special Agent Gordon, I'll shift gears a
10 little bit again. Are you familiar with something called the
11 Tor network?

12 A. Yes, I am.

13 Q. First of all, what does "Tor" stand for?

14 A. When it was originally created, it was -- it stood for
15 The Onion Router.

16 Q. What is it? What is the Tor network?

17 A. The Tor network basically is a area of the Internet that
18 allows individuals to conduct activity, go to websites in an
19 anonymous fashion.

20 Q. And in basic terms, how does it work? How does it
21 accomplish that end?

22 A. In order for an individual to use Tor, the typical method
23 or typical way to do that is they will download a software
24 package from Tor Project. Once they download this package and
25 install it, they will then be able to access the Tor network

1 through a browser that comes with this software package.

2 Once they're using this browser, essentially their
3 communications, instead of taking the most direct route to a
4 website, will be bounced through other individuals' computers
5 that are also participating in the Tor network. Therefore,
6 the IP address that it looks like you're actually coming from
7 will be hidden or obfuscated.

8 Q. So if I wanted to go to CNN.com using the Tor network,
9 could I do that?

10 A. Yes.

11 Q. And what would the web server on the other end see in
12 terms of my IP address?

13 A. The IP address that they would see would not be the
14 actual IP address located at your house, it would be the IP
15 address of the last computer in this chain that was relaying
16 your communication.

17 Q. Does it cost anything to access the Tor network?

18 A. No, it does not.

19 Q. What about to download the Tor browser you talked about?

20 A. It does not cost anything.

21 Q. Is it illegal to use the Tor network, just generally?

22 A. No, it's not.

23 Q. Do websites exist on the Tor network?

24 A. Yes, they do.

25 Q. What are those websites called?

1 A. They're typically referred to as hidden services.

2 Q. And how does someone access a website that's on the Tor
3 network as opposed to the regular Internet?

4 A. Tor hidden services or websites that are hosted within
5 the Tor network itself utilize a unique suffix at the end.
6 Instead of it being CNN.com, a website that would be hosted on
7 Tor would end in .onion.

8 Q. How might someone find or find out about websites that
9 operate on the Tor network?

10 A. Normally an individual would have to have some type of
11 previous knowledge of a website on the Tor network to get to
12 it. Knowledge of this could come from either other
13 individuals providing them with the addresses -- you would be
14 able to Google some of them, but you would not necessarily be
15 able to access them.

16 By far the most common way though is there are
17 directories that exist on the Tor network itself that will
18 give you what the address is, what the name of the website is,
19 and generally what the content or purpose of the site is.

20 Q. Special Agent Gordon, did you -- have you participated in
21 the investigation of the PedoBook website?

22 A. Yes.

23 Q. Was PedoBook a website that operated on the Tor network?

24 A. Yes, it was.

25 Q. So it's a hidden service?

1 A. Yes.

2 Q. And in what ways did you become familiar with the
3 PedoBook Tor hidden service?

4 A. Through the investigation, I visited the website itself
5 which operated and had functions very similar to Facebook;
6 visited the site while it was up and actually active, created
7 an account on there in order to see what all functionality the
8 site had, as well as from a review of information once we
9 seized the site itself.

10 Q. After the PedoBook website was seized, what was your role
11 with respect to that website?

12 A. Once the website was seized, I functioned as the
13 administrator of it for a period of time, as well as
14 continuing to interact with individuals, both as the
15 administrator and as just a typical user with normal user
16 privileges and rights.

17 THE COURT: Mr. Becker, it is getting close to break
18 time. So let's go ahead and take our afternoon recess.

19 Please reconvene in the jury room at 3:30, and we'll
20 start again at 3:30.

21 We're in recess.

22 (Jury out and recess taken at 3:15 p.m.)

23 (At 3:35 p.m. on August 19, 2014, with counsel for the
24 parties and the defendant present, and the jury NOT present,
25 the following proceedings were had:)

1 THE COURT: Do we need to talk about anything before
2 the jury comes out?

3 MR. NORRIS: Nothing of substance, just a
4 housekeeping matter.

5 MR. BECKER: Just one brief housekeeping matter, your
6 Honor, in terms of efficiently presenting the evidence that's
7 going to start coming out now, we have all of the exhibits
8 loaded onto our trial computer. Special Agent Gordon's
9 testimony for the next lengthy section is going to be the
10 exhibits that make up the screenshots and the board data that
11 the Court heard the stipulation about.

12 We would like to move those into evidence. We'd also to
13 like to display those using the computer as opposed to having
14 to flip through the binder. We do have a copy of all the
15 premarked exhibits in that binder that's on the witness stand.
16 It's a little tough to navigate right now because there's so
17 much in there.

18 So I wanted to see what the Court's preference was and
19 the most efficient way to go ahead and do that.

20 THE COURT: And I don't have the stipulation here in
21 front of me, but if you can list the exhibits from the
22 stipulation, and then I'll just get on the record that there
23 is no objection -- and I anticipate none in light of the
24 stipulation -- and then we'll get them into the record.

25 MR. BERRY: Judge, I may still object based on

1 relevance and 403. So I guess I don't -- for foundational
2 purposes, I don't object. And that was part of the
3 stipulation.

4 My concern is some of the chats in there that I
5 previously filed a motion in limine -- that was overruled --
6 arguing some of those were irrelevant and unfairly
7 prejudicial.

8 THE COURT: Well, let's proceed then by having the
9 offer made. And if you'll please list the exhibits for me
10 since I don't have that stipulation in front of me.

11 MR. BECKER: Indeed, your Honor. It will be --

12 THE COURT: Okay, I've got it in front of me.

13 Exhibits 1 through 4, 6A through 6D, 11 and 69, 5 through
14 5D so that would be 5, 5A, B, C and D. There is a 5; there is
15 not a 6.

16 MR. BECKER: That's correct, your Honor.

17 THE COURT: Okay. 7, 9 -- oh, 7 through 9A, so we
18 have 7, 8, 9 and 9A because there is both 9 and a 9A. And
19 that appears to be it. Is that correct, Mr. Becker?

20 MR. BECKER: That's correct, your Honor. At this
21 time that's correct.

22 THE COURT: All right. So there's been an offer of
23 those exhibits listed in the stipulation.

24 And Mr. Berry, would you like to make your objections?

25 MR. BERRY: Yes, your Honor. I would object based on

1 the relevance and 403, them being unfairly prejudicial, I
2 believe; that some of the photographs that were not alleged in
3 Counts IV through VII, first of all, are not relevant; number
4 two, are highly and unfairly prejudicial.

5 But next I believe that some of these exhibits also
6 contain comments that are fantasy chat, that are irrelevant
7 and unfairly prejudicial.

8 THE COURT: Okay.

9 Response, Mr. Becker?

10 MR. BECKER: Indeed, your Honor.

11 First of all, all of the material in the exhibits that
12 the government is currently proffering comes from the PedoBook
13 website, including the specific activity of the user
14 PTasseater and fuckchrist on that website, which is, of
15 course, the defendant's alleged alias in this case. And so
16 all of this information consists of activity that that user
17 engaged in on the site. That is charged activity and part of
18 the charged activity here.

19 It does consist of -- there are child pornography images
20 contained within numerous of the screenshots from the website
21 which is, of course, part of that site and part of the
22 evidence. And so we don't believe that there's any unfair
23 prejudice here. That is what this website was about; that is
24 what was contained on that website.

25 So while prejudicial in the sense of it being a part of

1 the evidence and incriminating, there's no unfair prejudice.
2 This is simply what was on this site and what it was about.

3 Particularly with respect to the private messages, the
4 private messages are contained -- first, just for the record
5 purpose, private messages are contained in Exhibit No. 4 and
6 Exhibits 9 and 9A.

7 The content -- the objection the defendant makes in terms
8 of the prejudicial effect of content of private messages on
9 the board was raised pretrial, ruled on by Judge Thalken, and
10 then a ruling that was sustained and upheld by Judge
11 Bataillon.

12 So it has been subject to the Court's previous ruling
13 here. That is docket number 148 -- that is the findings and
14 recommendation of Judge Thalken; docket 169, which is Judge
15 Bataillon's order upholding those findings and
16 recommendations.

17 THE COURT: Just so I'm clear on the relevance, with
18 respect to these exhibits, what is the government's position
19 regarding the relevance to a particular element of a
20 particular charge?

21 MR. BECKER: Indeed. First, your Honor, the
22 information that the defendant disclosed and articulated in
23 private messages is beyond just messages to other users about
24 the sexual exploitation of children, in particular the violent
25 sexual exploitation. That is certainly a part of some of the

1 messages.

2 There are private messages that were exchanged where he
3 revealed his location in the D.C./Maryland/Virginia area.
4 There are private messages where the defendant solicited from
5 other users child pornography and images of child pornography,
6 conduct which constitutes a substantive violation of the
7 advertising statute which of course is crucial to our proof of
8 the conspiracy to advertise count in particular.

9 There are private messages that include content that
10 describes what times of day the user fuckchrist and PTasseater
11 was on the site. That is, of course, key evidence of the
12 identity of the perpetrator ultimately found to be
13 Mr. DeFoggi.

14 THE COURT: So is it fair to say that you are not
15 offering these exhibits as information about the defendant's
16 character or propensity to commit the offense?

17 MR. BECKER: No, absolutely not, your Honor.

18 And with respect to -- particularly to messages that
19 discuss the violent sexual abuse of children, that is
20 pertinent because in part it goes to the particular groups
21 within PedoBook that the defendant was a member of, which
22 members was the defendant, in fact, conspiring with, what were
23 the defendant's interests in terms of sexual abuse which, of
24 course, translates to particular types of child pornography.

25 It is also relevant because it's one of the ways it

1 identifies Mr. DeFoggi as the perpetrator.

2 And the Court heard a bit of it in opening statement.
3 Found on Mr. DeFoggi's laptop computer, which the jury will
4 ultimately hear about, are not only references to the user
5 names PTasseater and fuckchrist, but the content of messages
6 sent between users that discusses this same theme of
7 particularly a violent sexual abuse of children.

8 So the fact that the user PTasseater/fuckchrist on
9 PedoBook expresses these particular interests is not relevant
10 just because it's salacious, just because it's nasty talk.
11 It's because we find those same sorts of messages on the
12 defendant's computer, which then helps to identify him as the
13 person behind the keyboard as PTasseater and fuckchrist.

14 THE COURT: The objections on grounds of relevance
15 and on the grounds that the prejudicial effect would outweigh
16 the probative value are overruled.

17 I will receive into evidence Exhibits 1, 2, 3, 4, 5, 5A,
18 5B, 5C, 5D, 6A, 6B, 6C, 6D, 7, 8, 9, 9A, 11 and 69.

19 Anything else we need to address before the jury comes
20 in?

21 MR. BECKER: Just, your Honor, I would intend to
22 publish these exhibits using the government's trial computer
23 as opposed to the ELMO or the books. And I just wanted the
24 Court's approval for that, if that's all right.

25 THE COURT: You may.

1 MR. BECKER: Thank you.

2 THE COURT: Please bring in the jury.

3 P. MICHAEL GORDON, PREVIOUSLY SWORN, RESUMED THE STAND

4 (Jury in at 3:47 p.m.)

5 THE COURT: Please be seated.

6 Mr. Becker, you may continue with your direct

7 examination.

8 MR. BECKER: Thank you, your Honor.

9 DIRECT EXAMINATION (Cont'd.)

10 BY MR. BECKER:

11 Q. Special Agent Gordon, when we broke we were starting to
12 discuss the PedoBook Tor network hidden service. Can you just
13 tell the ladies and gentlemen of the jury what was the
14 PedoBook website?

15 A. The PedoBook website itself was a social networking type
16 of website that functioned very similar to Facebook.

17 Based on our investigation into it, its primary purpose
18 seemed to be an area on Tor where individuals would be able to
19 meet and communicate about the sexual exploitation of children
20 through either communications such as simple text messages or
21 the exchange of various images and videos.

22 Q. How would you go about accessing the PedoBook website?

23 A. To access the PedoBook website, you first had to be able
24 to access Tor and then have access to the particular .onion
25 address that identified PedoBook itself.

1 Q. For approximately how long was PedoBook active?

2 A. I believe it was active from the early part of 2012 until
3 it was finally taken down December 8th of 2012.

4 Q. Was a user of PedoBook required to register an account on
5 PedoBook in order to access it?

6 A. No. An individual could access PedoBook and be able to
7 view a number of the images and a number of the areas on the
8 site. However, full functionality and access to the site
9 could only be accomplished if an individual actually
10 registered an account.

11 Once they registered an account, they would have a user
12 ID, a screen name, and they would be able to send and receive
13 private messages, set up groups; again very similar to
14 FaceBook.

15 Q. Those sorts of functionality were not available to
16 someone who simply navigated to the site but didn't register?

17 A. Correct.

18 Q. All right. Have you had the opportunity previously to
19 review Government Exhibits 1 through 9A, including 5A through
20 D and 6A through D?

21 A. Yes.

22 Q. Are they fair and accurate screenshots -- do they include
23 fair and accurate screenshots of the PedoBook website?

24 A. Yes.

25 Q. Can you tell us, first of all, what is a screenshot?

1 A. A screenshot is just an image file or a picture that is
2 taken of exactly whatever is visible on a computer screen. It
3 can be accomplished through either a function that's built
4 into the Windows operating system itself or most other
5 operating systems, or other programs that can be downloaded
6 and installed on a computer can be used to create these as
7 well, such as Camtasia or Snagit.

8 Q. How were the screenshots of the PedoBook website created?

9 A. These screenshots themselves that you'll be seeing were
10 created from a -- the data that existed on PedoBook when it
11 was finally taken down on December 8th.

12 The website itself was stood back up in an offline
13 capacity so that law enforcement would be able to view the
14 site as it existed without others being able to view it.

15 Q. Was log data also obtained and extracted to make some of
16 the exhibits that we'll be seeing?

17 A. Yes, it was.

18 Q. And how was that -- how were those exhibits created?

19 A. As we controlled the -- and seized the PedoBook website,
20 as individuals would visit the website, we would record the
21 various locations that they would visit. This information was
22 then saved off and then utilized within a database file that
23 we were able to associate various actions with particular
24 users.

25 This information in these exhibits was created from that

1 data.

2 MR. BECKER: Your Honor, with the Court's indulgence,
3 if I could just shift to our computer screen?

4 THE COURT: You may.

5 BY MR. BECKER:

6 Q. Special Agent Gordon, I'm going to start by showing you
7 Government Exhibit 1. Are you able to see that on your
8 computer screen?

9 A. Yes.

10 Q. So first of all, just generally if you can describe what
11 is Government Exhibit No. 1?

12 A. Government Exhibit No. 1 is a screenshot that was taken
13 of the first page that an individual would see if they went
14 straight to the PedoBook.onion URL itself. You can see
15 here -- whoops.

16 (Off-the-record discussion had.)

17 BY MR. BECKER:

18 Q. Special Agent Gordon, if we zoom towards the top
19 left-hand corner of Government Exhibit 1, page 1...

20 A. Yes, that's where I was looking.

21 Q. Can you tell us -- sorry. What do we see in the top
22 left-hand corner of Government Exhibit 1, page 1?

23 A. The top left corner is the URL for PedoBook itself.

24 Q. Can you read that URL for us?

25 A. oqm66m6iyt6vxk7k.onion.

1 Q. And why is there not a .com or .net or .edu at the end of
2 that URL?

3 A. Because in this particular case, the .onion is taking the
4 place of the .com. It indicates that this is a hidden service
5 that is located on the Tor network itself and can't be
6 accessed just by accessing the Internet.

7 Q. And the series of characters to the left of the .onion,
8 how does that differ from what we might think of a normal
9 website URL, like CNN?

10 A. When a hidden service is created, it's not created with a
11 people-friendly URL. It's essentially a series of letters and
12 numbers that uniquely identify this particular hidden service
13 so that the Tor network is able to direct a person's Tor
14 browser to where the Tor hidden service is located.

15 Q. So if a user wanted to navigate to the PedoBook website,
16 what would they have to plug into their browser?

17 A. They would have to have a Tor browser installed, and they
18 would have to put in that URL right there.

19 Q. And for the record, you just put a mark next to the URL
20 that you've already read to us on Government Exhibit 1.

21 A. I did, yes.

22 Q. All right. Moving your attention towards the middle
23 section of Government Exhibit 1 -- first of all, in order to
24 access this particular page, would an Internet user have to be
25 logged in to the site?

1 A. No. As the picture's taken or the screenshot is showing
2 right now, there is nobody logged in; there's no information
3 in the user name, password; and there are none of the
4 representations at the top of the screen that would show a
5 user account is logged in.

6 Q. So the first time someone went to a site like this, this
7 is what they would have seen?

8 A. Yes.

9 Q. I want to direct your attention first to the words below
10 the word "PedoBook."

11 A. All right.

12 Q. Starting with the far left, and let's move from left to
13 right. If you can first explain, what does that word
14 "Activity" signify?

15 First, what are each of those words in terms of the
16 website?

17 A. Each of those words are essentially sections or different
18 portions of the website that an individual could access just
19 by clicking on them.

20 Q. Are you familiar with tabs?

21 A. Yes.

22 Q. Can you explain what tabs are?

23 A. A tab is basically a -- like a visual representation on a
24 computer screen of regular tabs that you might see in a binder
25 or file folders.

1 Q. And how does that relate to this page of PedoBook?

2 A. The tabs in this case would be these words directly below
3 "PedoBook."

4 Q. And so, if a user had clicked on the word "Activity,"
5 what happens?

6 A. They would see the latest activity that was occurring
7 within the PedoBook site itself.

8 Q. And is that what we see here on Government Exhibit 1?

9 A. Yes.

10 Q. All right. Can you just take us through a couple of the
11 entries of -- first, as of what date would this have been the
12 latest activity on the Facebook website?

13 A. This would have been the activity as it existed on
14 December 8, 2012.

15 Q. And what is some of the latest activity that we see on
16 this exhibit?

17 A. Some of the latest activity, the first entry is related
18 to user Misiek is now friend with Kleinlochgeier.

19 To the left of that particular entry is a small image.
20 Those are commonly referred to as avatars. The PedoBook site
21 itself would allow individuals to choose different visual
22 representations for their accounts. There was no restriction
23 on what can be used. There were default icons that could be
24 used for the avatars, but most of the users would choose to
25 change them. In this instance, user Misiek appeared to use

1 what appeared to be an infant laying on its back.

2 The two images that you see directly below the "Misiek is
3 now a friend with Kleinlochgeier" shows the avatar for Misiek
4 with the small arrow pointing to another avatar. That would
5 be the avatar that represents -- that user Kleinlochgeier had
6 chosen to be a representation of his account.

7 Q. And what does it mean to become a, quote, friend with
8 another user on PedoBook?

9 A. Essentially the same thing that it would on Facebook.
10 You can have additional access to an individual's account,
11 depending upon the level of activity. You could follow them,
12 things of that nature.

13 Q. You mentioned user avatars. Do those commonly consist of
14 -- on PedoBook, did those commonly consist of child
15 pornography images themselves?

16 A. Child pornography, child exploitation material, or
17 demonstrated some type of sexual interest in a child, yes.

18 Q. The words Misiek, M-i-s-i-e-k, what is that on PedoBook?

19 A. That would be the user name. That would be the name that
20 other individuals would see or that they would communicate
21 with.

22 Q. Were there any particular themes of some users' user
23 names on PedoBook?

24 A. If you look down to the third entry where you can see
25 user pedostepdad, many of the names on PedoBook related to

1 either words, phrases, or terminology associated with the
2 online exploitation or the sexual exploitation of children.

3 Q. The term "pedo," what does that refer to?

4 A. Pedo is usually understood to be short for pedophile or
5 pedophilia.

6 Q. That third entry notes that the user pedostepdad
7 commented on a file. Can you just explain that particular
8 functionality?

9 A. Once an individual posts a file, if another user decided
10 that they wanted to put a comment on a file or congratulate a
11 user, "That was a very nice file," or something, it would be
12 registered as a comment.

13 Q. And for each entry on the latest activity, there's an
14 entry with a number of days ago. Can you explain what that
15 meant on the website?

16 A. In this case, these images themselves were not created
17 when the bulletin board or when the website was taken down.
18 These images -- these screenshots were taken 461 days after
19 that activity; so approximately March, April of this year, if
20 my math is correct.

21 Q. So this is -- the activity that's shown on here is as of
22 December 8th of 2012?

23 A. Correct. And this portion of the website that is doing
24 the calculation is simply using that last date and the current
25 date when these screenshots were taken.

1 Q. Will we see other exhibits that depict the exact date of
2 particular communications on PedoBook?

3 A. Yes, either the exact same dates or later dates,
4 depending on when the actual activity occurred.

5 Q. Would those be in the board logs that you referenced
6 earlier?

7 A. Yes.

8 Q. If I can draw your attention to page 2 of Exhibit 1, and
9 what do we see, Special Agent Gordon, on page 2 of Exhibit 1?

10 A. This first tab is the activity tab with three subtabs in
11 it, All, Mine and Friends.

12 The All tab itself is essentially the latest activity
13 that we saw on the previous exhibit.

14 Q. And on this exhibit, are we logged in as any particular
15 user?

16 A. Yes, we are.

17 Q. And if I just back off, can you tell as what user are we
18 logged in as here on Government Exhibit 1, page 2?

19 A. As of right now, this screenshot was created as if we
20 were logged in as the website administrator himself.

21 Q. How can you tell?

22 A. Over here on the right side, those icons right there
23 (indicating) are representative of different functions and
24 control features that an administrator would be able to
25 perform.

1 Additionally, up here in the left (indicating) is the
2 particular icon or avatar that was associated with the
3 administrator.

4 Q. Directing your attention to that top -- the top left
5 corner of Government Exhibit 1, page 2, there are three icons
6 below the web address or URL starting on the left. First,
7 would a user have been able to click on each of those?

8 A. Yes.

9 Q. Starting with the leftmost one with the picture, where
10 would that take a user?

11 A. This first one here to the left would have taken you to
12 your own profile; in other words, the information that you had
13 entered, files that you may have uploaded, comments that you
14 may have made, things particular to that particular account.

15 Q. And moving to the right, there's an icon that looks like
16 a couple of people.

17 A. That particular icon was the Friends list. You could
18 click on that and it would give you just a quick summary of
19 all of your friends.

20 Q. And to the right of that, there is an icon of an
21 envelope.

22 A. The envelope itself was the private message feature of
23 PedoBook. It functions like any other type of private message
24 feature for a website. Usually they were private messages
25 exchanged between two individuals that would only be visible

1 to those individuals.

2 Q. Moving to page 3 of Government Exhibit 1, and if we can
3 just zoom in on the center of page 3 here, which of the tabs
4 are we looking at here?

5 A. Currently we're looking at the tab known as the Wire.
6 Again, it is subdivided into three different subtabs, All,
7 Mine, and Friends.

8 Q. Who would have -- what users would have had access or
9 been able to view the Wire postings?

10 A. Pretty much anyone that accessed the sites could have
11 viewed this particular area. You can think of the wire as
12 like a timeline or a wall. Anyone could post on it or make
13 comments on it. It would then be visible either in the "All"
14 area; or if you wanted to narrow it down a little bit more,
15 you could click on the "Mine" or the "Friends" just to see
16 things that you had posted or things that your friends had
17 posted.

18 Q. So when you said you could click on -- so the words All,
19 Mine, and Friends appear in the top left of the exhibit, would
20 a user have been able to click on those?

21 A. Yes.

22 Q. And in terms of the activity that's commemorated here on
23 this exhibit, the second entry down has a reference to the
24 words TC. Do you see that?

25 A. Yes.

1 Q. Can you explain what that and the characters next to it
2 signify?

3 A. During the investigation, we became aware of a private
4 messaging program essentially like Microsoft Messenger, AIM,
5 Yahoo, Skype, very similar, that was referred to as Tor Chat.

6 It was basically an instant messaging program that would
7 function over the Tor network thereby hiding who different
8 individuals were and where they were located.

9 TC in this case is an abbreviation for Tor Chat. The
10 letters and numbers that follow the colon there are
11 essentially the user name or the phone number for somebody's
12 Tor Chat program.

13 Q. Now, is Tor Chat something that existed within PedoBook
14 or outside of it?

15 A. No. It was a separate program that had to be downloaded
16 individually from Tor or even without accessing PedoBook.

17 Q. Directing your attention to again the same page, there is
18 an entry by a user 8XXXMAND. Do you see that entry?

19 A. Yes.

20 Q. Can you read it, first of all, and then I'm going to ask
21 you a couple of questions about some of the terms.

22 A. "Others bored tonight. I love little girls, 3 to 9,
23 dislike hurt core/snuff/BDSM. Anyone want to talk and maybe
24 trade? TC. n4oy6rxga7cucq4g."

25 Q. First of all, would someone who had not registered an

1 account have been able to post a message like this?

2 A. No.

3 Q. I'd like to ask you to define a couple of the terms here.
4 The first one is the term "hurt core".

5 A. Hurt core is a term that is typically associated with
6 some type of violent sexual act against an individual.
7 Typically it's some of the more extreme child exploitation
8 material that you might see. Examples could include dunking
9 of the victim's head in a toilet, suspension by their ankles,
10 use of candles, candle wax, things of that nature.

11 Q. There's also a term "snuff" used. Can you define that
12 term, please?

13 A. Snuff is a term that normally relates to the eventual
14 murder or death of someone on an image or video.

15 Q. And the term "BDSM"?

16 A. BDSM is an abbreviation for bondage, domination,
17 sadomasochistic. It relates to individuals that would be
18 involved with things such as whipping, candles, bindings of
19 some type, restraints, things of that nature.

20 Q. And that user's comment also includes a comment about
21 wanting to talk and maybe trade. What would "maybe trade"
22 signify in this context?

23 A. In this context, I would interpret that as meaning the
24 individual was interested in communicating with somebody and
25 then exchanging material that both of them might find

1 acceptable.

2 In this case, for user 8XXXMAND, the type of material he
3 would be looking for would be underage females between the
4 ages of 3 and 9 years old, exclusive of the types of material
5 relative to the terms I just described.

6 Q. And by "material," what sort of material?

7 A. The material can consist of either images or videos or
8 potentially stories. It all depends on what they agree upon
9 within the chat itself.

10 Q. Was the membership of PedoBook in any way limited by
11 country or language?

12 A. No, it was not.

13 Q. Do you see any indication of that here?

14 A. Yes. Right now as it's displayed, there are at least two
15 posts by individuals that appear to be in a foreign language.

16 Q. Can you tell what language that is?

17 A. I believe it's German or some similar variant, possibly
18 Austrian. I'm not sure.

19 Q. All right. If we can move to page 4 of Government
20 Exhibit No. 1, what do we see here on page 4?

21 A. Page 4 is a list of all of the members that currently
22 have registered accounts on PedoBook. In other words, someone
23 that had taken the time to register an account, put in a user
24 and a screen name, create a password and fill in part of a
25 profile.

1 Q. How many total members are listed on the members page as
2 of December 8?

3 A. 8,137.

4 Q. If we move to the right side of Government Exhibit 1,
5 page 4, what functionality is available over on that side of
6 the page?

7 A. Here you can either search a member by things that
8 they've been tagged with, phrases that would tend to
9 individualize what a particular person liked or was interested
10 in. You would also be able to search by a particular user
11 name.

12 Q. All right. If I can direct you to Government Exhibit 1,
13 page 5, and again zooming in towards the middle section, what
14 do we see on Government Exhibit 1, page 5?

15 A. This is a list or a partial list of all of the files that
16 would have been uploaded to the PedoBook site itself.

17 The information provided includes a small thumbnail image
18 of a larger image, the title of the post or how the individual
19 decided to upload the file, if he decided to put some type of
20 caption with it, information relevant to the individual that
21 posted it you can see by the "by" section, how long ago that
22 was posted, and then any comments that that person made.

23 Further over to the right, you can see whether that
24 particular file is visible to everybody or just visible to
25 certain groups.

1 Q. So piggybacking on that, where the word "limited" appears
2 on this exhibit, what would that signify?

3 A. That would signify that the access to that particular
4 file would be limited. In other words, that particular file
5 would have to have been restricted in some way by the person
6 that uploaded it or based on the location in which it was
7 uploaded.

8 Q. And who are we logged in as in terms of this particular
9 screenshot?

10 A. Can you go to the upper right? We're still logged in as
11 the administrator.

12 Q. Would the administrator have had any limits on the
13 administrator's access to images?

14 A. The administrator could pretty much see and do anything
15 that he wanted to.

16 Q. And are you able to describe generally the content of the
17 images that appear on the left side of the exhibit, the
18 thumbnail images you talked about?

19 A. The images themselves that are visible right now
20 generally depict underage children engaged in some type of
21 sexual activity. Several of them have images of genitals and
22 anus of the underage female or the underage male as the focal
23 point of the image itself.

24 Others, I can't -- it appears that the second one down
25 might have an individual, either an adult or another child in

1 the picture -- it's kind of blurry.

2 Q. What would happen if a user clicked on one of those
3 thumbnail size images?

4 A. Once a user clicked on the thumbnail size image or even
5 the name out to the side right there, they would be taken to
6 the full-size image itself which, depending on how big the
7 image was, it might be just a little bit bigger than a
8 thumbnail or it might occupy half the screen.

9 Q. Towards the top of the exhibit, we see the words All,
10 Mine, and Friends. What would those signify?

11 A. "All" would indicate all of the files that anyone that
12 was a member of PedoBook had uploaded to the site. "Mine"
13 would be a filter that would just show files that I had put up
14 onto the site. Whereas "Friends" would be files that
15 individuals that were on my friends' list would have uploaded
16 to either their profile or to different groups.

17 Q. Is that one of the ways that the users could restrict who
18 gets to see particular images that they posted?

19 A. Yes. They could restrict the images to either specific
20 members that were in a particular group, or go in and say just
21 my friends can see these.

22 Q. If I can draw your attention to the lower right side of
23 the exhibit, there is a heading called "tag cloud". Can you
24 please explain what that means?

25 A. A tag cloud is basically a summary of descriptive terms

1 that have been applied to different items on a site.

2 In this case, most of these tag cloud terms would have
3 been applied to images. The way to ascertain the relative
4 popularity or prevalence of a particular tag would depend upon
5 where it's located within the cloud itself, starting at the
6 top left and reading right to left, as well as the relative
7 size of the font.

8 Q. So a larger font size would mean that more images have
9 been tagged with that particular tag?

10 A. Correct.

11 Q. All right. If we move to page 6 of Government 11 [sic],
12 which of the tabs do we see highlighted on this page?

13 A. This would be the individual groups tab.

14 Q. And what information do we see on a groups tab?

15 A. Within this particular group tab itself, we're on the
16 groups tab and this particular subtab is titled Newest. These
17 would have been the newest groups that had been created within
18 PedoBook. The information that's visible here includes
19 another small avatar that's a representative of the group
20 itself, as well as the name of the group.

21 Further over to the right is an indication of whether the
22 group is either open or closed. Open groups, pretty much
23 anybody could join, there wasn't any real restrictions.
24 Request permission to join; normally you would automatically
25 get in.

1 A closed group was a more private and restricted group
2 that could require an individual to actually confirm your
3 admittance, if not going to the extent that it needed you to
4 upload actual images of child pornography in order to prove
5 you had access to material or that you weren't law enforcement
6 or things of that nature.

7 Q. There's a couple of terms that I'm going to ask you to
8 give an explanation of.

9 The first group that we see here is "Inna fan group".
10 What, if any, significance does the term "Inna" have to child
11 pornography?

12 A. Inna is a well-known series of images of a victim.

13 Q. When you say "a series of images", what does that mean?

14 A. A series of images could be considered like a number of
15 photos or videos that are taken of a particular victim within
16 a certain setting or environment.

17 Q. Is it common for users of these sites to have areas
18 devoted to particular victims of child pornography?

19 A. Yes.

20 Q. Directing your attention down to the bottom right corner,
21 there's a group called "Vicky's fans". What is the
22 significance of Vicky to child pornography?

23 A. Vicky is another identified victim that back when I first
24 started doing this, there were numerous images and videos of
25 her on the Internet being sexually assaulted. And the

1 common -- the common name associated with all of these images
2 and videos was "Vicky".

3 Q. And I'm sorry, going back to -- still on the Groups page,
4 drawing your attention to the top right-hand corner, there are
5 four terms, All Groups, My Groups, Groups I Own and Group
6 Invitations. Can you describe the significance of those?

7 A. All Groups would just be all of the groups, it would
8 display all of them.

9 My Groups would be groups of which I am a member or I've
10 requested membership and been granted.

11 Groups I Own would be groups that I started or that I had
12 some type of control over.

13 And Group Invitations would be either invitations that I
14 sent out to request membership in a group or possibly
15 invitations that were sent to me to join a group.

16 Q. So each of these boxes is one that a user could click on
17 to get to that information that you described?

18 A. Correct.

19 Q. Moving to page 7 of Government Exhibit 1, what section of
20 PedoBook do we see on page 7?

21 A. This is a section entitled Polls, P-o-l-l-s. Again this
22 section is subdivided into three subtabs, All, Mine and
23 Friends.

24 Q. What were polls?

25 A. Polls were basically questions or queries that individual

1 members could post and request that people provide answers to.

2 Q. And moving your attention to the right side, some are
3 described Public and some are Limited. What does that mean?

4 A. Public and Limited would again roughly correspond to the
5 public or private setting. If the indication would be public,
6 then most everybody would be able to participate in it;
7 whereas if it was limited, it might just be restricted to a
8 particular group or to a particular individual's friends.

9 Q. On the top right of the exhibit, there is what looks like
10 a button, New Poll. What functionality would that have?

11 A. That would initiate the creation of a new poll as created
12 by the administrator in this case.

13 Q. Because that's who's logged in here when the screenshot
14 was taken?

15 A. Correct.

16 Q. Were there rules applicable to the PedoBook website?

17 A. Yes, there were.

18 Q. Drawing your attention to page 8 of Government Exhibit 1,
19 what page do we see here?

20 A. This is the Rules page.

21 Q. Was this accessible from the main page of the website?

22 A. Yes, it was.

23 Q. And if you could go ahead and just read to us the rules
24 of PedoBook as posted on the site.

25 A. The rules were last updated 519 days ago.

1 "PedoBook is a communication tool for fellow pedos to
2 discuss their interests and share content. Here are the rules
3 for our community:

4 "1. Be civil. PedoBook is for the discussion of our
5 mutual pedophilic interests in a mature and civilized
6 fashion. Please be respectful of your fellow users, even
7 those that do not share your point of view.

8 "2. Extreme content/topics; for example, Hurtcore, Scat,
9 etc. Bestiality is allowed only if it involves children or
10 JB." In this case, JB is understood to be jail bait,
11 typically images or videos depicting an individual that
12 appears to be underage.

13 Q. And just for the record, "bestiality".

14 A. Bestiality refers to some type of sexual interaction
15 between a human and an animal.

16 Q. Thank you.

17 Please continue.

18 A. "No snuff or gore." Snuff and gore -- we previously
19 discussed snuff. Gore, I would interpret as being just some
20 type of gory, bloody, or generally nasty representation in an
21 image.

22 "Please keep these topics private to you and your friends
23 or in groups that are private to their members out of respect
24 for those that find these distasteful.

25 3. More to come if I think of them."

1 This last one is basically just an advisement that right
2 now these are the only rules of PedoBook; but if I think of
3 more, I'm going to put them up here.

4 The final part down there, "Note: Adding somebody as a
5 friend gives them access to content and posts that you have
6 marked as 'Friends Only' regardless of whether or not they add
7 you as a friend, in a manner more reminiscent of Google+ and
8 Facebook (friending does not need to be mutual or approved by
9 the other party.)"

10 Q. Were those the rules as they existed as of the date that
11 the FBI seized PedoBook?

12 A. As of the date of the seizure and the takedown on
13 December 8th, yes.

14 Q. Were these rules available to any user that navigated to
15 PedoBook, whether or not they had locked in or not?

16 A. Yes.

17 Q. So that's something a user could have accessed the first
18 time they came across the PedoBook website.

19 A. Correct.

20 Q. I'm going to move your attention to Government Exhibit 9
21 [sic]. First of all, I just want to ask you generally what
22 type of screenshot is this and does it differ from the type of
23 capture we've been looking at?

24 A. Yes.

25 Q. What kind of screenshot is this one?

1 A. This one was created -- instead of the normal screenshot
2 that would just depict what is shown on the page itself or on
3 the screen itself, this one was created -- and if you notice
4 at the bottom left, down there, you can see it says page 1 of
5 3.

6 Q. If I can zoom in...

7 A. This was created to show the entire content of that
8 particular web page, not just what would be visible on your
9 screen, but what you might have to scroll down to look at as
10 well.

11 Q. And just for the record, I may have misspoke. This is
12 Government Exhibit No. 1, page 9.

13 Which page of PedoBook does this display?

14 A. This displays the Rules area.

15 Q. First of all, could users comment to a particular -- to
16 the particular rules posting on PedoBook?

17 A. Yes.

18 Q. Do we see examples of those comments on this exhibit?

19 A. Yes, we do.

20 Q. I want to direct you to page 10 of Exhibit 1. I'll back
21 out just so you can see that.

22 First of all, is page 10 a continuance of the comments to
23 the Rules page?

24 A. Yes, it is.

25 Q. I want to direct you to a posting by the user

1 Little_Girl_Hugger. Are you able to see the text of that
2 post?

3 A. Yes.

4 Q. Can you read that posting, please?

5 A. From user Little_Girl_Hugger, the comment or the
6 suggestion is: "Another good idea would be to recommend the
7 users of this site to not reveal too much personal information
8 about themselves and do not recommend users to set up any real
9 life meeting events. The LEA" -- understood to be law
10 enforcement agencies -- "are definitely watching this site.
11 And the last thing anyone wants is to be revealing your real
12 identity on this site. This site is still not a real Facebook
13 where it is safe for posting personal info like your face,
14 city of current residence, and etc."

15 Q. Is that common advice among users of child pornography
16 websites such as this that operate on Tor?

17 A. I'd say it's very common advice.

18 Q. Special Agent Gordon, I'd like to move to Government
19 Exhibit No. 2. First of all, what are we looking at generally
20 on Government Exhibit No. 2?

21 A. Government Exhibit No. 2 is showing again just the home
22 page of the PedoBook hidden service as an individual would see
23 it once they accessed it through the .onion URL.

24 In this particular case, however, we are logging in as
25 user name fuckchrist and then the password had been entered

1 there as you can tell from the dots.

2 Q. And page 2 of Government Exhibit No. 2?

3 A. This would be the user profile for user name fuckchrist
4 and in this instance the screen name that was chosen was
5 PTasseater.

6 Q. Can you explain the interplay between a user name and a
7 screen name?

8 A. A user name is essentially the name or account name that
9 would be used to generate a log-in or to create the account
10 itself. It's not possible to have two identical user names
11 within the same system.

12 If you've ever tried to create an e-mail account on like
13 Hot Mail or Google or something like that, and it comes back
14 and it tells you this name has already been taken, it's a very
15 similar function to this. There would be a clash of
16 information in being able to sort things.

17 PTasseater, however, would be the name that would be
18 visible whenever an individual was making some type of posts
19 or being referred to within the site itself.

20 Q. What are the initials PT understood to mean in the
21 context of child exploitation?

22 A. The two letters PT, as it relates to child exploitation,
23 is generally understood or taken to mean preteen.

24 Q. Now, who would have chosen the user name fuckchrist and
25 display name or screen name PTasseater?

1 A. That would have been the individual who created the
2 account. Neither of these values are automatically assigned
3 by the software on which PedoBook ran.

4 Q. Below the word PTasseater, do you see a section that's
5 sort of a grayed section titled About Me?

6 A. Yes.

7 Q. First, what's the text in that section on the PTasseater
8 profile page?

9 A. The information entered there is: Have many perversions,
10 contact me for fantasy chat.

11 Q. Who would have provided that information?

12 A. That would have been the individual that created or had
13 access to the account.

14 Q. There's also another shaded box around the word
15 Interests. First, what's the content of that?

16 A. Interests would be tags or again descriptive information
17 about this particular user profile, things they were
18 interested in, types of files or images or activities that
19 they would like to see or would be interested in.

20 Q. What were the particular interests chosen by the user
21 PTasseater?

22 A. In this case, it's exhibitionism, rimming, piss, and
23 incest.

24 Q. Towards the right side of the page, there's a shaded box
25 with the word Friends. What is depicted there?

1 A. Depicted in that box are the individual avatars of
2 individuals on this particular user fuckchrist's friends list.
3 These would have been the avatars that individuals that he
4 decided to friend had chosen for their accounts.

5 Q. What do you notice about those avatar images?

6 A. A majority of the ones that are visible in this shot
7 definitely depict underage or minor children. The majority of
8 them depict the children or have the minors' genitals or anus
9 as the focal point of the image itself.

10 Additionally, it appears that many of them also appear to
11 be infants or toddlers.

12 Q. Below the Friends section there is a shaded box with the
13 text Group Membership. What information is contained there?

14 A. These are the different groups which this individual has
15 joined within PedoBook.

16 Q. What are some examples of groups that the user PTasseater
17 was a member of?

18 A. On this page, the eight groups that are visible are Hung
19 Boys, Hurt the Core, Anything Goes - Hardcore Child Fucking,
20 Babies and Toddlers, Wanna Be Balls Deep in Boys, Oh Shit,
21 BoyHole, and Aaron's Hell.

22 Q. Below that last group name is the text More Groups. What
23 does that indicate?

24 A. That would indicate that in addition to the eight that
25 are visible here, there were additional groups of which this

1 account was a member.

2 Q. When you first join PedoBook, are you automatically
3 assigned to any groups?

4 A. No.

5 Q. So what is the significance of these -- of the fact that
6 you see this group membership by that user?

7 A. This would indicate that the user account fuckchrist had
8 solicited for membership in these groups or had been
9 approached to join these groups.

10 Q. Moving to -- well, first if I could direct your attention
11 to the top left-hand section and the URL. What do you notice
12 about the particular URL for this page?

13 A. For this page, you can see that it has the normal
14 PedoBook URL right here (indicating). However, additional
15 information is visible to the right of the .onion being
16 /profile/fuckchrist. In this instance, this would indicate to
17 me that the information visible on this page related to this
18 particular user account.

19 Q. All right. Moving to page 3 of Government Exhibit 2,
20 which tab do we see here?

21 A. We're on the Activity tab and the All sub tab.

22 Q. And just backing out, what user are we logged in as when
23 this screenshot is taken?

24 A. We're logged in as user fuckchrist.

25 Q. And so what does that mean about the particular activity

1 that we see here on this page, Government Exhibit No. 2,
2 page 3?

3 A. The activity that we're seeing on this page is
4 essentially all of the activity again. However, if there
5 were -- unlike with the previous images that we were looking
6 at where we were logged in as the administrator, we wouldn't
7 necessarily see images that were in some type of limited,
8 closed, or restricted area unless this account had been
9 granted permission to view or visit those areas.

10 Q. So what we're seeing here is the activity that the user
11 PTasseater fuckchrist would have seen on this particular page?

12 A. That's correct.

13 Q. If we can move to page 4 of the exhibit, first just
14 recap, what kind of screen capture are we looking at here on
15 page 4?

16 A. Again, this is one of the scrolling type of screen
17 captures. Again, it's a screenshot but it's not just
18 restricted to what's on the screen. It also includes material
19 that you'd have to scroll down on the side of a website to
20 look at stuff that might be down here below the screen.

21 Q. And what do we see depicted here on page 4?

22 A. This would be all of the activity related to the user
23 account fuckchrist, user name or screen name PTasseater.

24 Q. And the activity that we see at the top, would that be
25 the most recent activity?

1 A. Yes.

2 Q. And so as of what date?

3 A. 456 -- this would be activity as of December 8th of 2012.

4 Q. Whatever -- the most recent things that had happened as
5 of the date the board stopped --

6 A. Correct.

7 Q. -- ceased operating.

8 A. Correct.

9 Q. What were the last few things that the user PTasseater
10 did before the board shut down?

11 A. PTasseater became friends with PushOut. The avatar
12 chosen by the screen name PushOut appears to depict a female
13 with her genitals as the focal point of the image.

14 The next thing appeared to be that PTasseater
15 participated in a poll, which the question was: When you have
16 your dick inside of a child's pussy, how do you like her to
17 react? And then in parentheses, real experience only.

18 There appears to be 12 comments that were posted related
19 to that. PTasseater's comment or participation isn't visible
20 on this.

21 The next one --

22 Q. Let me just ask you, is there other information extracted
23 from the board that will show what the answer to this poll was
24 by the user PTasseater?

25 A. Yes.

1 The next information or the next entry down is
2 participation in yet another poll: Have you ever had a sexual
3 encounter with an underage? Looking to see if anyones [sic]
4 had sex with an underage. I know a lot of people may say so
5 because we love to fantasize and it's a turn on but looking
6 for honest answers please.

7 Q. Drawing your attention now to the next entry, do you see
8 an entry about PTasseater joining a group Hurt the Core?

9 A. Yes.

10 Q. Are you familiar with that group?

11 A. Yes.

12 Q. What was the group Hurt the Core?

13 A. Hurt the Core was a section of PedoBook or a closed
14 group -- I believe it was a closed group within PedoBook that
15 was primarily focused on the hurt core type of images or
16 videos of child exploitation material.

17 Hurt the Core itself was also another Tor hidden service
18 located outside of PedoBook.

19 Q. Moving your attention to page 7 of Exhibit No. 2, and
20 what do we see depicted on page 7?

21 A. These are all of -- well, a portion of the friends that
22 PTasseater friended while the PedoBook site was up and
23 running.

24 Q. On the bottom of the screenshot, we see the words
25 Previous and Next and a series of numbers in between them.

1 What does that signify?

2 A. That represents multiple pages of friends. In this case,
3 we're on the -- it looks like we're on the second page because
4 that's what is highlighted. This page contains ten entries.
5 So based on that, this user account could have had upwards of
6 70 friends based on the numbers that are visible.

7 Q. And if we move to the next page, page 8?

8 A. More than 70. It continues on up through 25.

9 Q. And if we move to the next page, page 9?

10 A. Up to 30.

11 Q. So that would indicate approximately how many friends
12 total?

13 A. 300 -- between 290 and 300 -- 291 and 300.

14 Q. And moving to page 10 of Government Exhibit No. 2, what
15 do we see depicted here on page 10?

16 A. These are images that would have been uploaded by
17 individuals on the username fuckchrist's friends' list. The
18 information visible is very similar to the files page that we
19 saw previously.

20 You have a small avatar or you have a small thumbnail
21 right there (indicating), you have the name of the file
22 itself, you have who posted it.

23 Over here (indicating) you also can see whether the file
24 is available to the public or if it is simply available to
25 individuals that are actually logged in to PedoBook, meaning

1 someone that just visited the site but did not actually have
2 an account would not have been able to have seen that image.

3 Q. Were any images on this exhibit so restricted?

4 A. Yes.

5 Q. Which ones?

6 A. This one and this one (indicating).

7 Q. Just for the record, what are the file names of those
8 two?

9 A. The file names of those two images are -- of the first
10 one is 332410.jpg. It appears to depict a prepubescent minor
11 nude laying on a pink sheet or some type of pink surface with
12 the genitals exposed in the primary center of the shot.

13 The second entry that is restricted to log-in users only,
14 the name of the post or wherever it's located is "who want
15 fuck this girls". And it depicts what appears to be two
16 females, possibly minors, in bathing suits or bikini tops with
17 shorts on.

18 Q. There are file names -- do you see the file names
19 Babyhure7 and Babyhure6 depicted on that exhibit?

20 A. Yes.

21 Q. What is the significance, if any, of sequentially
22 numbered file names like that?

23 A. Normally sequentially numbered file names like that could
24 represent the number of a series or the location in a
25 particular series that this image would fall.

1 Q. All right. Moving to page 11 of Government Exhibit
2 No. 2, what do we see depicted there?

3 A. These are the groups which the user fuckchrist is a
4 member of.

5 Q. At the bottom of the screen, do we see another Previous,
6 Next, with numbers in between it?

7 A. Yes, we do.

8 Q. How many total pages?

9 A. Based on this, there are four.

10 Q. And about how many groups are listed per web page?

11 A. There are ten.

12 Q. If we move to page 12 of the exhibit, what do we see
13 depicted on page 12?

14 A. We see an additional ten groups of which the user account
15 fuckchrist is a member.

16 On this page, as the previous page, you can -- you see
17 the avatars representing the site. You see the name of the
18 group, as well as what type of group it is, in addition to the
19 number of members of the group right there (indicating).

20 On this page, there appears to be one group that has been
21 identified as a closed group, that being -- that being Boys
22 Hardcore right there (indicating). And it appears to have 341
23 members.

24 Q. And on page 13 of Government Exhibit No. 2 --

25 A. We see another ten groups. In this case you see the Hurt

1 the Core group right there (indicating) that we saw on one of
2 the previous exhibits. You also see another closed group
3 identified as 0-2 Year Little Girls Private Sharing Group
4 2012. That's identified as a closed group with 104 members.

5 Another group that we've seen in a previous exhibit is
6 also the Anything Goes - Hardcore Child Fucking. It's an open
7 group with 244 members.

8 Q. Just for the record, what do we see on the last page of
9 that exhibit, page 14?

10 A. We see the last two groups. Both of those are open
11 groups. The last one being, Wanna Be Balls Deep in Boys
12 which, if I recall correctly, we've seen in a previous
13 exhibit.

14 Based on this, the total number of groups that this user
15 was a member of as of December 8th was 32.

16 Q. All right. Special Agent Gordon, I'd like to direct your
17 attention to Government Exhibit No. 3. And first zooming
18 towards the top of this particular exhibit, Government Exhibit
19 3, page 1, what do we see depicted here?

20 A. This would be the landing page or the home page for the
21 PedoBook group Anything Goes - Hardcore Child Fucking.

22 Q. So if you had clicked on one of those group names that we
23 saw on the prior exhibits, is this where you'd be delivered
24 to?

25 A. Yes. If you clicked on the Anything Goes one, this is

1 where you would have gone. If you would have clicked on Hurt
2 the Core, you would have gone to a similar page for that.
3 Same for any of the other groups.

4 Q. So all of this -- all of the content we're seeing here on
5 this exhibit would have been accessible or viewable to such a
6 user?

7 A. Correct.

8 Q. Let's go through Government Exhibit No. 3, page 1, the
9 sort of content that was on a group home page.

10 A. All right.

11 Q. There is a shaded box towards the middle with the word
12 Description. What would go there?

13 A. This would be just the general description or function
14 for this particular group. It could include information about
15 what's acceptable there, possibly throw some rules in if they
16 wanted to.

17 The description itself is not prepopulated with anything.
18 Whoever created the group or who had administrative control of
19 the group would have been the person that entered all of this
20 text.

21 Q. Is that description something a user would see the first
22 time a user went to this sort of group page?

23 A. It should be, yes.

24 Q. What was the description -- what is the description --
25 first of all, was the user PTasseater fuckchrist a member of

1 the group Anything Goes - Hardcore Child Fucking?

2 A. Yes.

3 Q. What is the description of this particular group?

4 A. "A place to post anything, any kiddy fucking or naked
5 pics are welcome here, just so long as the little ones aren't
6 old enough to grow hair between their legs. This is also a
7 place to chat hard" -- in all capital letters -- "about the
8 pics, what we like about them, what we'd like to do to the
9 little ones in the pics."

10 Next line is, "No limits." Final line is, "Don't come
11 here if you're easily offended."

12 Q. What does the phrase "no limits" signify?

13 A. No limits would tend to entail that there are no
14 restrictions on the type of material, that nothing is
15 forbidden to be discussed, posted, or commented on.

16 Q. There is an image to the left of that shaded box with the
17 description. First, in general terms, what is it the -- what
18 is that image as it relates to a group?

19 A. That's the avatar representation of the group. It would
20 have been chosen by the individual that started the group.
21 It's not the -- that would not be an image that would have
22 been defaulted to once the group was created.

23 Q. And what does the avatar of this particular group depict?

24 A. This avatar appears to depict a possibly minor female.
25 She appears to be disrobed from at least the upper part of her

1 chest. There appears to be a penis visible in the picture
2 with what appears to be ejaculate being directed towards her
3 face.

4 Q. Moving down the page from that avatar section, I want to
5 ask you about some of the other group sections.

6 First, there's a gray shaded box, Group Blog. Was there
7 any activity in that section of this group?

8 A. No.

9 Q. There's also a section Group Bookmarks. Was there any
10 activity in that section of this group?

11 A. No.

12 Q. There's another shaded section, Group Files. Was there
13 activity in that section of the group?

14 A. Yes, there was.

15 Q. And what is depicted -- what is shown below the shaded
16 box for the Group Files?

17 A. Below this shaded box are six small thumbnails depicting
18 images or files that have been uploaded to this group. All of
19 the images have children depicted in them in some way.

20 Several of the images depict the children engaged in some type
21 of sexual activity, either with an adult or by an adult.

22 Q. And below the collection of thumbnails and the titles,
23 there's the words "Upload a File". What would that allow a
24 user to do?

25 A. That would allow an individual that desired to to -- once

1 they selected that link, they would then be able to upload a
2 file, and it would be posted into this group's particular file
3 section.

4 Q. Under the heading Group Activity, what sort of activity
5 gets -- what sort of group activity gets commemorated there?

6 A. In this case, all of the activity shown details
7 individual members commenting on different files.

8 Q. Is there -- with respect to the first entry below the
9 shaded Group Activity box, is there any association with a
10 file that's also visible on that page?

11 A. Yes. If I recall correctly, I believe this activity
12 might have been visible on the latest activity. Pedostepdad
13 made the comment about file 1039807.jpg. That file itself is
14 visible directly to the left of the comment, being right here
15 (indicating).

16 Q. What user posted that file?

17 A. That would have been user jackspade.

18 Q. Directing you to page 3 of Government Exhibit No. 3, for
19 which PedoBook group is this the group home page?

20 A. This is the group home page for Boys Hardcore.

21 Q. Was the user PTasseater fuckchrist a member of this
22 group?

23 A. Yes, he was.

24 Q. What is the group description?

25 A. The description is, "A group for boys, they have sex"

1 followed by a colon and a right parenthesis. On the Internet,
2 that type of combination of characters is referred to as an
3 emoticon, and it represents a smiley face.

4 "A group for boys. They have sex with man's _D. Join in
5 and post your nice pix," and it looks like another smiley
6 face. "You need a avatar or a profile text. Other I will
7 delete. Join in and you will see more. Only fuck pix. Other
8 thinks will delete. Have fun," and then it looks like another
9 smiley face.

10 Q. You mentioned earlier some groups had -- or used a
11 description in order to establish rules for that group. Is
12 that an example of that?

13 A. Yes. In this case, an individual, when they join the
14 group or prior to it, they're required to have an avatar or
15 something within their profile text. Otherwise, whoever owns
16 this board will kick them out of the group.

17 Additionally, the only type of pictures that are desired
18 are only depicting individuals engaged in some type of
19 intercourse.

20 Q. Was Boys Hardcore an open or closed group?

21 A. Can we go back to the previous exhibits?

22 Q. Sure. Let me direct you to Government Exhibit No. --
23 Court's indulgence?

24 THE COURT: This may be a good stopping point. It is
25 five o'clock, and the jury's put in a long day.

1 Thank you for your time and attention today. Please
2 reconvene in the jury room before nine o'clock tomorrow
3 morning. We'll plan to start promptly at 9:00.

4 Thank you. We're in recess.

5
6 (Adjourned at 5:01 p.m.)
7
8
9

10 I certify that the foregoing is a correct transcript from
11 the record of proceedings in the above-entitled matter.

12 /s Brenda L. Fauber
13 Brenda L. Fauber, RDR, CRR
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10-7-14
Date

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